SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 477

EDWARD YELLIN, PETITIONER,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 1] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

Hammond Criminal 3023

Title 2 U.S.C.A., Section 192

Indictment—Filed July 17, 1959.

UNITED STATES OF AMERICA,

vs.

EDWARD YELLIN

Count I

The Grand Jury charges that:

1. The Committee on Un-American Activities of the House of Representatives was at all times and places pertinent hereto duly authorized by the Legislative Reorganization Act of 1946, 60 Stat. 812, 828-829 and by House Resolution 5 of the 85th Congress to conduct, by committee or subcommittee, certain inquiries, including the inquiry hereinafter described.

2. A duly appointed subcommittee of the Committee on Un-American Activities was authorized to conduct hearings in Gary, Indiana, beginning on February 10, 1958, on subjects under inquiry by the Committee, to-wit: The extent, character, and objects of Communist infiltration and Communist Party propaganda activities in basic industry in the Gary, Indiana, area, and the execution by administrative agencies concerned of Public Law 637, of the 83rd Congress known as the Communist Control Act of 1954, relating to the eligibility to exercise the rights and privileges provided under the National Labor Relations Act of labor organizations determined by the Subversive Activities Control Board to be Communist-infiltrated organizations.

3. Edward Yellin, defendant herein, having been summoned as a witness by the authority of the House of Rep-

resentatives, through its aforesaid Committee, to give testimony before such Committee or a duly appointed subcommittee thereof, upon matters of inquiry committed to such Committee by the above Act and Resolution, and having appeared before a duly appointed subcommittee of such Committee on February 10, 1958, in Gary, State and Northern District of Indiana, did then and there wilfully refuse to answer the question set forth in the next paragraph herein, which is pertinent to the question under inquiry.

4. Mr. Yellin, where did you reside prior to September 1957?

[fols. 2-7] Count II

The Grand Jury further charges that:

1. The allegations of paragraphs 1, 2 and 3 of Count I are realleged and incorporated herein.

2. Will you tell the commitee, please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1957?

Count III

The Grand Jury further charges that:

1. The allegations of paragraphs 1, 2 and 3 of Count I are realleged and incorporated herein.

2. Were you a member of the Communist Party on the 23d of June, 1949, which is the date of application filed in your name of employment in Gary?

Count IV

The Grand Jury further charges that:

1. The allegations of paragraphs 1, 2 and 3 of Count I are realleged and incorporated herein.

2. Will you tell the committee whether or not in 1957 there were present in any of the steel unions at Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party?

Count V

The Grand Jury further charges that:

1. The allegations of paragraphs 1, 2 and 3 of Count I are realleged and incorporated herein.

2. Will you tell the committee what stand the Communist Party took in Gary in any of its units with regard to the acts of the Soviet Union in Hungary in 1956?

A True Bill.

Kumit S———

Kenneth C. Raub, United States Attorney

[fol. 8] [Filed endorsement omitted]

In United States District Court for the Northern District of Indiana, Hammond District

[Title omitted]

Motion to Dismiss Indictment—Filed August 31, 1959

The Defendant moves that the indictment herein and each count thereof be dismissed on the following grounds:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. The indictment shows upon its face that the questions asked, which the Defendant is charged with refusing to answer, relate to political beliefs, association and similar matters, inquiry as to which the committee is not empowered to make, because of the provisions of the First Amendment to the Constitution of the United States securing the freedom of speech, press, assembly and petition.

3. The indictment omits an essential element of the alleged offense in that it fails to state the respect in which it is claimed that the questions put to Defendant which he refused to answer were material and relevant to the inquiry of the congressional committee before which Defendant testified.

4. The statute and resolution creating the Committee of Un-American Activities of the House of Represent-

[fol. 9] atives and committing certain matters of inquiry thereto are invalid as applied in the present case; and United States Code, Title 2, Sec. 192, can not be constitutionally applied to punish the withholding of testimony from said committee.

5. The Defendant's reliance upon the Supreme Court's decision in *Watkins* v. *United States*, 354 U.S. 178 establishes as a matter of law that his refusal to answer questions was not willful and that a conviction would deprive him of his liberty without due process of law under the Fifth Amendment.

The Defendant further moves that Counts II and IV of the indictment be dismissed on the ground that they are too vague to inform the defendant of the essential facts constituting the offense charged as required by Rule 7 (c) F.R. Crim. Proc. and do not conform to the requirements of the Sixth Amendment to the Constitution.

Dated: August 28, 1959.

/s/ Burton D. Wechsler, Wechsler & Dreyfus.
/s/ Victor Rabinowitz, Rabinowitz & Boudin,
Attorneys for Defendant.

[fols. 10-50] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, HAMMOND DISTRICT

[Title omitted]

MOTION FOR BILL OF PARTICULARS—Filed August 31, 1959

The Defendant moves that the Court order the United States to file a bill of particulars setting forth the manner in which each of the questions set forth in Counts I through V is alleged to be pertinent to the question under inquiry referred to in Count I paragraph 2 of the indictment.

Dated: August 28, 1959.

/s/ Burton D. Wechsler, Wechsler & Dreyfus.
/s/ Victor Rabinowitz, Rabinowitz & Boudin,
Attorneys for Defendant.

[fols. 51-72] IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

[Title omitted]

ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND FOR BILL OF PARTICULARS—December 16, 1959

Defendant's motion to dismiss is denied.
Defendant's motion for a bill of particulars is denied.
Enter.

Luther M. Swygert, Judge.

Hammond, Indiana, December 16, 1959.

[Filed endorsement omitted.]

[fol. 73] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

No. 3023 Hammond Criminal

UNITED STATES OF AMERICA,

v.

EDWARD YELLIN

JUDGMENT AND COMMITMENT—March 11, 1960

On this 11th day of March, 1960 came the attorney for the government and the defendant appeared in person and [1] with counsel

It is adjudged that the defendant has been convicted upon his plea of [2] Not Guilty and finding of guilty of the offense

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

of Title 2, USCA, Section 192, Contempt of Congress, as charged [3] in counts 1, 2, 3 and 4 of indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] One (1) Year as to Count One, One Year as to each of Counts 2, 3 and 4, to run concurrent with sentence in count 1.

Defendant Fined $250.00, plus costs.

It is adjudged that [5]——

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/ Luther M. Swygert, United States District Judge.

The Court recommends commitment to: [6]

s/ Kenneth Lackey, Clerk.

[3] Insert "in count(s) number . . " if required.

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

[6] For use of Court wishing to recommend a particular institution.

[fol. 74] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

[Title omitted]

MOTIONS FOR A NEW TRIAL AND ARREST OF JUDGMENT—Filed March 16, 1960

Please Take Notice that pursuant to Rule 33 of the Federal Rules of Criminal Procedure the defendant respectfully moves this Court for a new trial in the above case on the ground that the Court erred in the following respects:

1. In holding that the questions which are the subject of the indictment were not absolutely privileged under the provisions of the First Amendment to the Constitution of the United States.

2. In holding that the authorizing resolution of the House Un-American Activities Committee was sufficiently clear and definite to justify interrogation of defendant under compulsory process upon the subjects and by the questions embodied in the indictment.

3. In holding that the questions embodied in the indictment were pertinent to the subject matter under inquiry.

4. In holding that the House Un-American Activities Committee had a bona fide legislative purpose.

5. In holding that the House Un-American Activities Committee had a bona fide legislative purpose in calling the defendant and in asking him the questions which are the subject of the indictment.

[fol. 75] 6. In holding that the defendant was not lawfully justified in relying upon the decision of the United States Supreme Court in *Watkins v. United States*.

7. In holding that under the circumstances shown here the defendant's refusal to answer questions was wilful.

8. In holding that the Committee, in requiring defendant to appear at a public session and in denying his request for an executive session, did not violate its rules.

9. In holding that the Committee's violation of its own rules in denying to defendant an executive session should

not result in a dismissal of the indictment and a verdict of acquittal.

10. In holding that Counts 2 and 4 were valid and were not so indefinite and unclear as to their meaning as to constitute a violation of the Sixth Amendment to the Constitution of the United States.

Please Take Further Notice that pursuant to Rule 34 of the Federal Rules of Criminal Procedure the defendant further moves for arrest of judgment on the ground that:

1. The indictment states no offense.

2. The indictment shows upon its face that the questions which are the subject of the indictment are absolutely privileged under the provisions of the First Amendment to the Constitution of the United States.

3. The indictment shows upon its face that the questions upon which it is based are completely immaterial to any subject of proper legislative investigation.

[fols. 76-110] 4. Counts 2 and 4 of the indictment are vague and indefinite in violation of the Sixth Amendment to the Constitution of the United States.

Dated, March 14, 1960.

Victor Rabinowitz, Rabinowitz & Boudin. Burton D. Wechsler, Wechsler & Dreyfus, Attorneys for Defendant.

CERTIFICATE OF SERVICE (omitted in printing.)

[fol. 111] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

[Title omitted]

ORDER DENYING DEFENDANT'S MOTIONS FOR REDUCTION IN SENTENCE, FOR A NEW TRIAL AND IN ARREST OF JUDGMENT—June 17, 1960

Defendant's motion for reduction of sentence is denied.

Defendant's motion for a new trial and arrest of judgment is denied.

Enter: Luther M. Swygert, United States District Judge.

Hammond, Indiana, June 17, 1960.

CC: U. S. Atty. Atty. Burton Wechsler, Gary Ind., Atty. Victor Rabinowitz, New York, N. Y.

[fols. 112-113] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

[Title omitted]

NOTICE OF APPEAL—Filed June 24, 1960

Name and address of appellant:

Edward Yellin, 715 So. Foley, Champaign, Illinois.

Names and addresses of appellant's attorneys:

Victor Rabinowitz, Rabinowitz & Boudin, 25 Broad Street, New York 4, N. Y.

Burton D. Wechsler, Wechsler & Dreyfus, 504 Broadway, Gary, Indiana.

Offense:

Contempt of Congress in violation of Tit. 2 U.S.C. § 192.

Concise statement of judgment or order, giving date and any sentence:

Judgment of guilty dated March 11, 1960. Appellant was sentenced to one year on Counts 1, 2, 3 and 4, the sentences to run concurrently, and fined in the sum of $250. and costs.

Name of institution where now confined if not on bail:

Appellant has been released on bail.

The above named appellant hereby appeals to the United States Court of Appeals for the Seventh Circuit from the above-stated judgment.

Dated, June 24, 1960.

/s/ Victor Rabinowitz, Rabinowitz & Boudin, 25 Broad Street, New York 4, N. Y. /s/ Burton D. Wechsler, Wechsler & Dreyfus, 504 Broadway, Gary, Indiana, Attorneys for Appellant.

[fol. 113a] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

Hammond Criminal No. 3023

UNITED STATES OF AMERICA

vs.

EDWARD YELLIN

Transcript of Proceedings—March 9, 1960

Record of proceedings in the above entitled cause of action before the Honorable Luther M. Swygert, United States District Judge, at Hammond, Indiana, on the 9th day of March, 1960, at 12:45 o'clock P.M.

APPEARANCES:

John C. Keeney, Esq., Department of Justice, Washington, D. C., Kenneth C. Raub, Esq., United States Attorney, Martin H. Kinney, Esq., Assistant United States Attorney, [fols. 2-22] representing the United States of America:

Victor Rabinowitz, Esq., of New York, N. Y., Burton D. Wechsler, Esq., of Gary, Indiana, representing the defendant.

The Court: In the case of United States v. Edward Yellin, Hammond Criminal Cause No. 3023, is the Government ready?

Mr. Raub: The Government is ready, your Honor.

The Court: Is the defendant ready?

Mr. Rabinowitz: The defendant is ready.

* * * * * * *

[fol. 23] Are you ready to proceed?

Mr. Keeney: Yes, your Honor.

GOVERNMENT'S MOTION THAT COUNT V OF INDICTMENT BE DISMISSED AND GRANTING THEREOF

Mr. Raub: The Government at this time would move that Count V of the indictment be dismissed.

The Court: Granted.

Mr. Keeney: If the Court please, I would like now to offer in evidence these documents. I showed them preliminarily to Mr. Rabinowitz. He may wish to look at them again.

The Court: Have they been marked?

Mr. Keeney: They have not been marked.

The Court: I wonder if you would have them marked first, please, for identification.

Mr. Keeney: Will you mark these, please, as Government's Exhibits 1 to 12, for identification?

(Said instruments were marked Government's Exhibits 1 to 12, inclusive, for identification.)

Mr. Keeney: If the Court please, if I may, I would like to [fol. 24] read just the identification of these into the record.

The Court: Are you going to offer them?

Mr. Keeney: I am going to offer them.

The Court: Would you mind stating what they are, just generally, as you offer them?

Mr. Keeney: Government's Exhibit 1 is a letter dated August 1, 1958, from the Speaker of the House of Representatives, to the United States Attorney, Northern District of Indiana, certifying the refusal of Edward Yellin to answer questions of a subcommittee of the House Committee on Un-American Activities.

Government's Exhibit 2 is a certified copy of House Report 2334, entitled "Proceedings Against Edward Yellin".

Government's Exhibit 3 is House Resolution 658, a resolution that the Speaker certify the report of the House Committee on Un-American Activities as to the refusal of Edward Yellin to answer questions of that Committee to the United States Attorney for the Northern District of Indiana.

Government's Exhibit No. 4 is a certified copy of House Resolution No. 2 of the Eighty-fifth Congress, showing the [fol. 25] election of the Speaker and the Clerk.

Government's Exhibit No. 5 is a certified copy of House Resolution No. 4 of the Eighty-sixth Congress, likewise showing the election of the Speaker and the Clerk for that Congress.

Government's Exhibit No. 6 is a certified copy of House Resolution No. 5, of the Eighty-fifth Congress, adopting

the rules of the House of Representatives for that Congress.

Government's Exhibit No. 7 is a copy of excerpts from the Journal of the House of Representatives, certified by the Clerk, showing the election of members of the House Committee on Un-American Activities, the resignation of one member, and the selection of a substitute member.

If your Honor please, this particular Exhibit No. 7 is offered as a certified excerpt from the Journal of the House pursuant to 28 U.S. Code 1736, the specific provision with respect to excerpts from the Journal of the House. The other documents go in under other provisions under the rules.

[fol. 26] Government's Exhibit No. 8 is an excerpt from the Minutes of an executive meeting of the House Committee on Un-American Activities, held January 15, 1958.

Government's Exhibit No. 9 is an excerpt from the Minutes of an executive meeting of the House Committee on Un-American Activities held on January 22, 1957.

Mr. Rabinowitz: Excuse me; did you say 1957?

Mr. Keeney: January 22, 1957, as to a quorum.

Government's Exhibit No. 10 is a copy of the Order appointing a subcommittee to conduct hearings in Gary, Indiana, commencing on February 10, 1958.

The Court: A subcommittee of what?

Mr. Keeney: A copy of an Order appointing a subcommittee of the Committee on Un-American Activities, to conduct hearings in Gary, Indiana, commencing on February 10, 1958.

Government's Exhibit No. 11 is a certified copy of the Minutes of an executive session of a subcommittee of the Committee on Un-American Activities, held April 16, 1958.

[fol. 27] Government's Exhibit No. 12 is an excerpt from the Minutes of an executive meeting of the Committee on Un-American Activities, held on April 16, 1958.

The Court: Have you had an opportunity to see these offered exhibits, Mr. Rabinowitz?

Mr. Rabinowitz: I had an opportunity to see them, but frankly, some of them, as they were described just now by Mr. Keeney, were not familiar to me. I would like an opportunity just to glance at them.

The Court: If it won't take too long, I will let you do it now, rather than to wait for a recess.

Mr. Rabinowitz: I don't think it will take more than two or three minutes.

Mr. Keeney: Will you mark this as Government's Exhibit 13, for identification?

(Said instrument was marked Government's Exhibit 13, for identification.)

Mr. Rabinowitz: Your Honor, I have no objection to any of these, except I don't understand the relevance of Government's Exhibit No. 5, which purports to be a copy of House Resolution No. 4, dated January 7, 1959, indicating [fol. 28] the election of the Speaker and the Clerk of the House. I just don't understand why it is here.

The Court: Can you enlighten him, Mr. Keeney?

Mr. Keeney: The purpose of that, sir, is to show that Ralph R. Roberts, who has certified certain of these documents, during this particular Congress was the clerk who was elected and was acting in that capacity at that time.

Mr. Rabinowitz: No objection.

The Court: Government's Exhibits 1 to 12 are admitted.

(And thereupon Government's Exhibits 1 to 12, inclusive, were admitted in evidence.)

Mr. Keeney: If the Court please, I would like to offer Government's Exhibit 13, entitled "Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States, Eighty-fifth Congress".

The Court: Any objection?

Mr. Rabinowitz: No objection.

[fol. 29] The Court: Admitted.

(And thereupon Government's Exhibit 13 was admitted in evidence.)

Mr. Keeney: If the Court please, I would request the Court to take judicial notice of the pertinent provisions of the Legislative reorganization Act of 1946, commencing 60 United States Statutes at Large 812, which is the beginning of the statute which is entitled Legislative Reorganization Act, and pages 828 and 829 thereof, where there is set forth the authority of the House Committee on Un-American Activities as a standing committee of the House of Representatives.

The Court: Any comment or objection?

Mr. Rabinowitz: I would assume the Court could take judicial notice of all of the statutes of the United States.

The Court: I would assume that, likewise.

Mr. Keeney: May our first witness, Mr. Frank Tavenner, take the stand, please?

Frank S. Tavenner, Jr., a witness on behalf of the Government having first been duly sworn testified as follows:

Direct examination.

[fol. 30] By Mr. Keeney:

Q. Mr. Tavenner will you state your full name?

A. My name is Frank S. Tavenner, T-a-v-e-n n-e-r, Jr.

Q. You are an attorney by profession, are you not?

A. Yes, I am.

Q. To what bars are you admitted?

A. I have been admitted to the bar of the state of Virginia, the American Bar Association, the federal bar.

Q. What is your occupation at this time, Mr. Tavenner?

A. I am counsel for the Committee on Un-American Activities.

Q. How long have you served as counsel for the Committee on Un-American Activities?

A. Since May 1, 1949.

Q. Were you counsel for the House Committee on Un-American Activities in February, 1958?

A. Yes, I was.

Q. Would you give us a brief description of your duties as counsel for the House Committee on Un-American Activities?

A. Well, my duties have been varied and have changed [fol. 31] from time to time, but I would say in the main they consist of consulting with and advising the Chairman and members of the Committee on both legal and other matters, when requested to do so; to advise with the Director of the Committee and investigative staff regarding procedures for the Committee and problems in regard to investigations; to prepare Committee resolutions, work on

Committee reports, work on proposed legislation; to conduct hearings when assigned to do that; to supervise investigations when assigned to do it.

I believe that covers it, in the main.

Q. Mr. Tavenner, directing your attention to February, 1958, did you participate in hearings of the House Committee on Un-American Activities or a subcommittee at that time?

A. Yes, I did.

Q. Where were these hearings?

A. In Gary, Indiana.

Q. During the course of the hearings at Gary, Indiana, did the Committee cause a subpoena to issue to compel the attendance of one Edward Yellin?

[fol. 32] A. Yes.

Q. Did Mr. Yellin appears?

A. He did.

Q. Was he accompanied by counsel at the time of his appearance?

A. Yes, he was.

Q. Did you interrogate Mr. Yellin on his appearance?

A. Yes.

Q. Mr. Tavenner, do you know, of your own knowledge, what the subject matter under inquiry was at these hearings in February, 1958, in Gary?

A. Yes I do.

Q. What is the source of your knowledge?

A. My source of knowledge was the Committee action which took place authorizing the conduct of the hearings

Q. Were you aware of the subject matter under inquiry at the time you prepared your interrogation?

A. Yes.

Q. Do you have any other source of information with respect to the subject matter under inquiry at the Gary, Indiana, hearings?

A. Any source of information?

[fol. 33] Q. Any other source of information with respect to the subject matter under inquiry.

A. Yes, I had source of information from the Director of the Committee, from the Committee members, which occurred at the time of the meeting that I am speaking of,

and from the investigator of the Committee who made a preliminary investigation in the Gary, Indiana area.

Q. Mr. Tavenner, do you know whether or not any opening statement was made at the time of these hearings?

A. Yes, it was.

Q. By whom was the opening statement made?

A. By the Chairman of the subcommittee, who was the Chairman of the full Committee.

Q. And that is who, please?

A. Congressman Francis E. Walter.

Q. Is this statement of Congressman Walter, this opening statement, reflected anywhere?

A. Yes, it is reflected at the beginning of the printed report of the hearings, and it is also reflected in the Committee's report to Congress, at which time a resolution [fol. 34] was presented to cite Mr. Yellin for refusal to answer questions, material questions.

Q. I will ask you whether or not it is also found in the report which the Committee submitted to Congress in connection with the citation of Yellin?

A. That is the report I was just describing.

Q. I hand you Government's Exhibit 2, and ask you if you can find therein the opening statement to which you referred.

A. Yes, it begins on page 3.

Q. Do you know whether or not the defendant Yellin was present at the time this opening statement was made by the Chairman of the Committee, Mr. Tavenner?

A. I cannot recall at this time, from my independent recollection, whether I saw him there, or not, but I asked him that question during the course of the interrogation, and he said he was.

Q. Now, Mr. Tavenner, would you read, please, the opening statement of Congressman Walter at the inception of these hearings?

A. Yes, sir.

[fol. 35] Mr. Rabinowitz: Your Honor, is it necessary to do this? It is in evidence.

. . . . . .

[fol. 36] The Court: Go ahead and read it. I want to hear it.

(Said opening statement was read by the witness from Government's Exhibit 2, commencing at page 3 thereof.)

* * * * * * *

[fol. 37] By Mr. Keeney:

Q. Mr. Tavenner, what information was the Committee seeking to develop at this hearing in Gary?

A. The Committee was undertaking to find out how serious the Communist propaganda activities and infiltration were in basic industry, particularly with regard to the steel industry in this area.

Q. Why was the Committee seeking this information?

A. The Committee had had a series of hearings involving this subject and was keenly interested in it. It had hearings in Baltimore which developed a very serious situation, as we thought; it had hearings in Youngstown, Ohio, and other places. And the Committee was of the opinion that it may be necessary to amend various Acts of Congress to tighten up laws with regard to Communist activities in this field.

Q. You say it might be necessary to amend certain laws. Did the Committee have any particular laws in mind?

[fol. 38] Mr. Rabinowitz: I object to what the Committee had in mind.

By Mr. Keeney:

Q. Do you know whether or not the Committee had any particular laws in mind?

A. Yes, I do.

Q. Was that made known to you?

A. Yes.

Q. As part of your duties?

A. Yes, at the time the Committee resolution was adopted.

Q. On that basis, what was made known to you?

Mr. Rabinowitz: I still object, unless there was some action by the Committee. We are talking about the Committee now.

The Court: Well, I will ask a preliminary question before I rule.

With respect to the laws that the Committee had in mind that might be changed, modified, or recommendations made by the Committee to Congress in that regard, was the Committee action informal, and by Committee members to you personally, or was it a formal matter made by the Commit- [fol. 39] tee, as a committee?

The Witness: It was both formal and informal, at a Committee meeting.

The Court: And you were informed of the Committee's——

The Witness: I was there.

The Court: That is, you heard the Committee state the laws which it was concerned with in this field?

The Witness: The whole general subject was discussed at the meeting before the Committee took action to pass this resolution, which I believe was January 21, 1958.

The Court: Any further comment before I rule?

Mr. Rabinowitz: I have no objection, your Honor, to any formal action that the Committee took, but I am not sure what the witness means when he talks about "informal" action. The Committee, like any other deliberative body, acts in a formal way.

The Court: What do you mean by "formal way," do [fol. 40] you mean by a written resolution or document? Couldn't they take action without its beings formalized in a document?

Mr. Rabinowitz: I don't know that it would have to be formalized in a document, but it certainly could not be mere conversation in a committee meeting.

The Court: As I understand it, this was not just conversation, but there was some action taken by the Committee, as a committee.

Is that right?

The Witness: May I explain that a little? I did not mean to indicate that there was any informal action taken different from the formal action, but in the taking of the formal action a report was made to the Committee, and the Committee discussed the laws in question and the whole problem, and then took action calling for this hearing.

The Court: The action was as a committee?

The Witness: Yes, as a committee.

The Court: And you were there when the Committee took that action?

The Witness: Yes, sir, I was present.

. . . . . .

[fol. 41] By Mr. Keeney:

Q. Is the action of the Committee reflected anywhere, in any document?

A. Yes, sir, it was included word for word in the opening statement of the Chairman, which I read just a moment ago; it was recorded in the minutes of the meeting, and you have entered that as an exhibit, but I do not know the number of it.

Q. I am handing you Government's Exhibit No. 8, and I will ask you if that is the action to which you referred. [fol. 42] A. Yes, sir; Exhibit 8 is the action that I was referring to.

The Court: Objection overruled.

. . . . . .

By Mr. Keeney:

Q. Mr. Tavenner, what is the authority for the House Committee on Un-American Activities to conduct investigations?

A. The authority is the Enabling Act, known as Public Law 601, which is the basic authority.

Q. Is that contained in the Legislative Re-organization Act of 1946?

[fol. 43] A. Yes, sir. It is Section 17, of Rule XI, but according to the most recent amendment is renumbered as Section 18.

Q. Let me ask you this: Was any action taken by the Congress at the inception of the session of Congress with which we are concerned here, the Eighty-fifth, to continue the authority of the Committee?

A. It is a standing committee of the House, and the Rules adopted for the current session reenact the earlier Rules prescribing the duties of this Committee.

The Court: By resolution, or by separate enactment?

The Witness: It is done by reenactment of the same Rules as had existed for the previous Congress, naming the Congress.

The Court: Where do you find Public Law 601, Mr. Keeney?

Mr. Keeney: 60 Statutes 812. It begins at 828, that is——

The Court: That is what you wanted the Court to take judicial notice of?

[fol. 44] Mr. Keeney: Yes, sir.

By Mr. Keeney:

Q. Mr. Tavenner, I am handing to you now 60 United States Statutes at Large, 79th Congress, Second Session, 1946, Volume 60, Part 1, and directing your attention to page 828, and the material under Q(1), Committee on Un-American Acitvities.

A. Yes, sir.

Q. I will ask you whether or not, in addition to the authority set forth therein, the Committee on Un-American activities has further responsibilities in the investigative field.

A. Yes; in addition to the enabling resolution set forth at that place, Section 136, of Rule 12, prescribes the oversight duties of all standing committees, which includes the Committee on Un-American Activities.

Q. What do you mean by the "oversight" responsibility?

A. The oversight responsibility is a responsibility placed on standing committees for the purpose of appraising the administration of laws in the field of the particular standing committee, to conduct hearings and investigations, so [fol. 45] as to aid Congress in the strengthening of those laws, or the amendment to them, if deemed necessary; that is, to assist Congress in observing the functioning of the government in the administration of laws. That is entitled "oversight," the oversight duty of the committee.

Q. Do I understand then, that under this oversight responsibility a committee, within its jurisdiction as granted by Congress, has the obligation to oversee the implementation of statutes in its area by the executive agencies?

A. Precisely that.

By Mr. Keeney:

[fol. 46] Q. Do you know whether or not Congressman Walter in his opening statement made any reference to specific legislation which the Committee had in mind at the time of conducting these hearings?

Mr. Rabinowitz: Objection. Congressman Walter's opening statement is in the record. It speaks for itself.

The Court: I assume that's right. If it is in there, it is in there.

Mr. Keeney: That's right.

By Mr. Keeney:

Q. Mr. Tavenner, do you know whether or not, subsequent to this hearing in Gary, legislation in the antisubversive field was sponsored by the members of Congress who participated in the hearings?

A. Yes; there were several bills offered by members of this subcommittee that functioned here.

Q. Were any offered by Congressman Walter?

A. Yes.

Q. Do you have a particular one in mind?

A. Well, I have several in mind. One was his bill endeavoring to redefine the organization clause in the Smith [fol. 47] Act.

Q. Would you please tell us what the Smith Act is, Mr. Tavenner?

A. Well, the Smith Act was an Act passed in 1940 which made it a violation of law to teach the overthrow of the government of the United States by force and violence, and to be a member of an organization that had such purposes, knowing of its purposes. Those are the main features of it. And then there was a conspiracy section to it.

The Supreme Court, in the Yates case, construed the word "organize" in a way that virtually destroyed the effectiveness of that Act, and at every hearing from the time of the rendition of that decision until a comparatively recent date the Committee has been studying not only that clause but other clauses of that Act with the idea of trying to repair it and Congressman Walter's bill relating to organization, the term "organization," was one of the efforts to repair that bill.

Q. Do you know whether or not any other members of this subcommittee that sat here in Gary introduced legis-
[fols. 48-49] lation in the antisubversive field subsequent thereto?

A. Yes.

Q. Who was that?

A. The bill known as the Scherer Bill—

* * * * * * *

[fol. 50] The Court: I will overrule the objection. What was the question?

(The last two questions and answers were read.)

By Mr. Keeney:

Q. What was the Scherer bill?

A. It was known as the Defense Facilities Protection Act of 1959, and was introduced on January 20, 1959.

Q. Mr. Tavenner, do you know whether——

The Court: Excuse me; if you are going to something
[fol. 51] else, I want to ask a question.

Just generally, are you acquainted with what that proposed legislation dealt with, or generally, what it provided?

The Witness: Yes, the purpose of the Act was to permit the federal government to guard strategic defense facilities against individuals believed to be capable of espionage and sabotage, or other subversion.

The Court: A penal statute?

The Witness: Yes, sir.

Mr. Keeney: If the Court please, may I have this marked as Government's Exhibit No. 14?

(Said instrument was marked Government's Exhibit 14, for identification.)

Mr. Keeney: If the Court please, Government's Exhibit No. 14 for identification, is entitled "A Bill to amend the Internal Security Act of 1950, and for other purposes," a bill which was referred to the Committee on Un-American Activities.

I show it to Mr. Rabinowitz.

[fol. 52] The Court: Are you acquainted with this bill, Mr. Rabinowitz?

Mr. Rabinowitz: I am generally acquainted with it.

The Court: Are you offering it?

Mr. Keeney: I am going to offer it to the witness for identification.

The Court: Well, why don't you do that?

By Mr. Keeney:

Q. Mr. Tavenner, I am handing you H.R. 9352, Government's Exhibit No. 14, and I ask you if that is the proposed bill, if you know whether or not that is the proposed bill to which Congressman Walter referred in his opening statement.

A. It is, yes.

Q. You know that from your work on the Committee?

A. Yes, sir.

The Court: Who was the author of this bill, or who sponsored it?

The Witness: Congressman Walter. The bill was prepared by the staff of the Committee on Un-American Activities.

[fol. 53] Mr. Keeney: If the Court please, I would like to offer it, subject to Mr. Rabinowitz's examination.

Mr. Rabinowitz: As I undertsand it, it is H.R. 9352, which was the bill which was referred to in the opening statement of Mr. Walter, which has already been admitted in evidence. That is right, isn't it?

Mr. Keeney: Yes.

Mr. Rabinowitz: I have no objection, your Honor.

The Court: Admitted.

(And thereupon Government's Exhibit 14 was admitted in evidence.)

The Court: Can you tell me, just generally, the nature or the subject matter of this bill?

The Witness: That is a very extensive bill. There are at least seventeen different provisions to it, according to my recollection, probably more. It is in the nature of an omnibus bill, in which there is collected numerous [fol. 54] provisions designed to restrict Communist Party

activities in various fields, passport being one of them, lobbying acts another, propaganda is another; the strengthening of the Communist Control Act of 1954 by putting stiffer penalties in it is another; many parts of which have been taken out by other congressmen and offered as specific items of legislation.

It includes provisions endeavoring to make misconduct before the Committee by witnesses an offense, very much the same type as misconduct before a court is made by federal statute, because the Committee has found that contempt procedure in many cases is totally inadequate to permit the Committee to continue properly with its work where there is a purposeful intent to interfere with the Committee's conduct of its hearings. That type of provision is in the bill.

There are numerous other things.

By Mr. Keeney:

Q. Mr. Tavenner, you testified previously, I believe, [fol. 55] that the Committee had conducted hearings with respect to Communist infiltration in basic industry, particularly the steel industry, in other areas.

Was there a reason, that you know of, for deciding to hold these hearings in Gary at the time they were held?

A. Yes. We considered that the steel industry was the most important basic industry in the country, and that Gary, Indiana was certainly one of the strategic places in the country involving the steel industry, with all of its plants there.

Q. Was there any particular reason why the Committee was concerned about infiltration at that time?

Mr. Rabinowitz: I object to what the Committee was concerned about.

By Mr. Keeney:

Q. Do you know if there was any particular reason why the Committee was concerned about infiltration in steel at this particular time?

Mr. Rabinowitz: Objection.

The Court: What is your objection?

* * * * * * *

[fol. 56] By Mr. Keeney:

Q. Do you know when the investigation, the initial investigation, was authorized with respect to hearings in Gary?

A. The initial investigation began in October, of 1957, that is, preliminary investigation.

Q. Did the authorizing of the preliminary investigation coincide with any other events with which the Committee was concerned?

A. Yes.

[fol. 57] Q. Did it coincide with decisions of the Supreme Court?

A. It did.

Q. A particular decision?

A. Yes.

Q. And what decision was that?

A. The Yates case.

Q. And what was the Yates case?

A. The Yates case was a decision in which the conviction of the top Communist Party officials in California was reversed on the ground, among other things, that the term "organize," when the Act spoke of membership in an organization, meant an organization established in 1945, that is, the inception of the Communist Party organization, as distinguished from continuing acts by a Communist Party organization, and on that basis the conviction was set aside.

I haven't made that too plain, but the difficulty with the construction was——

Mr. Rabinowitz: Your Honor, I have to object. I don't think it is proper for the witness to testify as to what [fol. 58] the effect of the decision was. Anyhow, I haven't objected up to this point, because it didn't seem to me that it made very much difference, since the Court can read the decision and judge for himself.

The Court: The decision itself or what it holds is not a matter of construction by the witness, but I assume that the impact of a certain event, whether it is the decision of a court, or something else, which may have to do with legislative inquiry, is pertinent, so if that is what this question attempts to elicit, I am going to overrule the objection.

Go ahead.

Will you read the last part of the answer of the witness, Mrs. Bretsch?

(The record was read.)

A. (continuing) — was that the term "organize," as used in the Act was construed by the Court to mean the original organization of the Communist Party, and not continuous acts of the Communist Party, such as acts of organizing [fol. 59] groups from time to time to engage in Communist Party activities, and therefore if the term "organize," as used in the Act, did not refer to continuing acts of organizing, these defendants were not guilty of anything.

Mr. Walter's Act, H.R. 2396, redefined the term "organize," so that it would include continuing acts of organizing.

Mr. Rabinowitz: Now I am hopelessly confused. The witness has just referred to H.R. 2396

The Witness: 2369.

Mr. Rabinowitz: 2369, which is not the Walter bill which was introduced a little while ago.

I just don't know what the witness is saying.

The Court: Objection overruled.

. . . . . .

[fol. 60] By Mr. Keeney:

Q. Mr. Tavenner, who was the first witness at the hearings in Gary in February, 1958?

A. John Lautner.

Q. Was the defendant Edward Yellin present during the interrogation of John Lautner?

A. He said he was, during the course of his testimony.

Q. Did you interrogate Lautner?

A. Yes.

The Court: What was his name?

Mr. Keeney: John Lautner, L-a-u-t-n-e-r.

The Court: Thank you.

By Mr. Keeney:

Q. Prior to interrogating Mr. Lautner, had you personally had any previous conversation with him?

A. Yes.

Q. With respect to the subject of his testimony?

[fol. 61] A. Yes.

Q. Did he at that time indicate that he could give you information with respect to the colonizing program of the Communist Party?

A. He did.

Q. Will you tell the Court, please, what Mr. Lautner told the Committee and yourself, as interrogator, with respect to his background in the Communist Party?

Mr. Rabinowitz: I object. I don't see how this can be relevant.

The Court: This may be preliminary, I suppose. Is it?

Mr. Keeney: Yes, sir, it is preliminary, but I might state our basis is that the witness heard the testimony of Lautner. We propose to introduce relevant testimony with respect to the colonizing program of the Communist Party through this witness. The defendant-witness heard it, so it is relevant with respect to his awareness of the pertinency of the questions that were propounded to him at the hearing.

[fol. 62] The Court: As part of the context of pertinency?

Mr. Keeney: Yes, sir.

Mr. Rabinowitz: That is only one of the objections. The other objection that I have is to this witness stating—apparently he is going to state, in some general summary form, what the question calls for.

Unless he intends to read from the record, which I don't know.

Mr. Keeney: We will offer the record, if that is the objection. We have a transcript of Lautner's testimony.

The Court: Well, unless it is a question of best evidence, I asume that a witness can say what he heard. If there is an objection, that that's not the best evidence, of course I would have to decide that question, as to whether the objection should be sustained on that basis.

I think on the other objection, I would have to overrule.

Mr. Rabinowitz: May I just ask to hear the question [fol. 63] read again?

(Question read.)

The Court: Before I rule, and before you comment or object, if you want to comment or object, are you going to offer to introduce this testimony about which you are inquiring?

Mr. Keeney: I will offer it; it doesn't matter——

The Court: You didn't intend to?

Mr. Keeney: I was going to ask him about it, or I will offer the Committee print of his testimony, either way.

The Court: What I am getting at is, if you are going to offer it, and if it will eventually be admitted, then I would rather hear it read in question and answer form, rather than to have it twice over; that's all.

OFFER IN EVIDENCE

Mr. Keeney: In that event, I will offer it, your Honor, and if it is refused I will try to put in testimony.

The Court: I am not suggesting that you do so; I am trying to avoid duplication.

Mr. Keeney: Would you please mark as Government's [fol. 64] Exhibit 15, for identification, "Hearings before the Committee on Un-American Activities," entitled "Investigation of Communist Infiltration and Propaganda Activities in Basic Industry (Gary, Ind., Area)," February 10 and 11, 1958.

(Said instrument was marked Government's Exhibit 15, for identification.)

Mr. Keeney: What is offerd here, your Honor, is a certified Committee print of the testimony.

Mr. Rabinowitz: Your Honor, I don't want to make a fuss about this on purely technical grounds, although there may be technical grounds for objection. But I would like to ask whether it is now proposed to offer just Mr. Lautner's testimony, and whether it is all of Mr. Lautner's testimony that you are offering, because this book contains the testimony of many other witnesses, all except Lautner having testified after Yellin.

The Court: Are you limiting it?

[fol. 65] Mr. Keeney: We will confine it to Lautner's testimony.

Mr. Rabinowitz: Are you offering all of Lautner's testimony?

Mr. Keeney: All of his testimony.

Mr. Rabinowitz: I have no objection to such of Lautner's testimony as is relevant. I think a great deal of this is totally irrelevant.

The Court: Well, this is being tried by the Court. If it were tried before a jury, of course there would be some question as to relevancy.

I am going to overrule the objection, and admit the exhibit.

(And thereupon Government's Exhibit 15 was admitted in evidence.)

. . . . . .

[fol. 66] By Mr. Keeney:

Q. Mr. Tavenner, do you know whether or not Edward Yellin had been identified as a member of the Communist Party in public testimony before the House Committee on Un-American Activities?

A. Yes, he had.

Q. Will you tell us when, and where?

. . . . . .

By Mr. Keeney:

Q. Were you present for the identification of Yellin as a member of the Communist Party by any witness?

A. No, sir.

Q. Do you know of any document that identifies Edward Yellin as a member of the Communist Party?

[fol. 67] A. Yes; the particular hearing at which the two witnesses testified, another attorney made the interrogation, and not I.

The Court: You were not present.

The Witness: I was not present.

The Court: But that is in a document?

The Witness: In a document, and I have it here.

By Mr. Keeney:

Q. Do you have the document with you, Mr. Tavenner?

A. I do not have it in the courtroom with me, but I have it in the office of the United States Attorney, I am reasonably certain.

Mr. Rabinowitz: Your Honor, I object to this. There is a way to prove this, and this isn't the way to do it. This witness wasn't present.

The Court: He hasn't said anything yet, except that he has a document which relates to the subject.

By Mr. Keeney:

Q. Mr. Tavenner, do you know whether or not Edward Yellin had been identified as a member of the Communist Party in any document?

[fol. 68] A. Yes, I do.

Q. Which was present in any public hearing?

A. Yes.

Q. Do you have a particular document in mind?

A. Yes, sir; I have in mind—

Mr. Rabinowitz: I object to anything further. He has answered, yes, he has a particular document in mind.

The Court: Well, I suppose he can say what document it is.

I will overrule that objection.

By Mr. Keeney:

Q. What document is it, Mr. Tavenner?

A. It was a document used in the testimony of a man by the name of Shaffer, taken at Lansing, Michigan, in which I examined the witness. The document was an issue of the Detroit News.

Mr. Rabinowitz: Your Honor, I object to his describing the document, unless we have it here.

The Court: I thought he said he had it.

By Mr. Keeney:

Q. Do you have that particular document?

A. I do not have the document. The document is set forth [fol. 69] in the transcript of the testimony.

Q. Was that document presented to the defendant at the time of his appearance as a witness?

A. Yes, my recollection is that I read it to the witness.

Q. Mr. Tavenner, I hand you Government's Exhibit No. 2, and ask you if you can find therein a reference to this document.

A. Yes, sir, it is on page 19.

Mr. Keeney: If the Court please, I would like to read now the portion of that document which this document reflects was read to the witness-defendant at the time of the hearing.

It is a photostatic copy of the Detroit News, bearing the date of January 17, 1949, entitled "Three Heed AVC Ban on Reds." It was Exhibit No. 2 in the hearing; it was so described. And I quote:

> "Three students resigned today from the University of Michigan Chapter of the American Veterans Committee because of a ruling adopted by the National AVC (meaning American Veterans Committee) convention [fol. 70] in November calling for the ouster of members who belonged to the Communist Party.
>
> "They were (that is, the three who resigned) William Carter, 3473 Townsend Avenue, Detroit; Edward Shaffer, of Pittsburgh; and Edward Yellin, of New York."

. . . . . .

By Mr. Keeney:

[fol. 71] Q. Mr. Tavenner, the excerpt that was read at the hearing, which I just read in this case, refers to the resignation of these three individuals from the University of Michigan Chapter of the American Veterans Committee in January, of 1949.

Did the Committee have any information that Edward Yellin was at the University of Michigan in 1949?

A. Yes, it did.

Q. Is that reflected anywhere?

A. Yes, that is reflected on the same page.

Q. Would you show us where that is reflected on the same page? Would you read from that page where it is reflected?

A. Question by me, "Were you a member of the Neafus Club of the Communist Party at the University of Michigan?"

"Mr. Yellin. I will decline to answer that question, sir, on the grounds already stated."

Question, "Were you acquainted with a person at the University of Michigan by the name of Francis X. T. Crowley?"

Answer, "I decline to answer that question on the grounds already stated, sir."

[fol. 72] Question, "Mr. Crowley testified before the Committee on Un-American Activities in June of 1954, at which time he identified you as a member with him of the Neafus Club of the Communist Party at Ann Arbor. Was he correct in his identification of you?"

Answer, "I will decline to answer that question, sir, on the grounds I have already stated."

Q. Mr. Tavenner, did the Committee have any information indicating that Yellin had previously been a resident of New York?

A. Yes.

Q. Is that reflected anywhere in these documents?

A. Yes, it is.

Q. Where is it reflected?

A. It is reflected in the document constituting the record of Mr. Yellin at the University of Michigan, showing that he was transferred there from the City College of New York.

Mr. Keeney: I think the Court can take judicial notice that the City College of New York is in New York City.

The Court: Is it on a certain page in this exhibit?

[fol. 73] Mr. Keeney: It is on page 12 of this, sir.

The Court: Go ahead.

Mr. Rabinowitz: Your Honor, I would like to object to the question, and move to strike the answer.

* * * * * * *

[fol. 74] The Court: objection overruled.

By Mr. Keeney:

Q. Mr. Tavenner, did the Committee have any information indicating that Yellin was employed in the Gary, Indiana area?

A. Yes, it did.

Q. Is that reflected anywhere?

A. Yes, sir.

Q. Where is it reflected?

A. It is reflected in the application for employment at the Steel Plant, which is Yellin Exhibit No. 3

Mr. Rabinowitz: I will object to this, on the ground that it is irrelevant. An application for employment is not evidence that he was employed.

The Court: Well, I suppose that is preliminary, if you are going to follow it up.

I assume that is correct, that an application is not tantamount to employment.

[fol. 75] If you are going to follow it up, I will overrule the objection.

By Mr. Keeney:

Q. Did you have information that Edward Yellin filed an application for employment with a company in the Gary area?

A. Yes.

Q. Where is that reflected?

A. That is reflected in the testimony of Mr. LaFleur, in which he stated that he was employed at the Steel Company plant.

The Court: That is, that the defendant Yellin was?

The Witness: Yes, sir.

By Mr. Keeney:

Q. Employed at the Steel Company plant in the Gary, Indiana area?

A. Yes, in the Gary, Indiana area.

Q. Mr. Tavenner, does the application for employment reflect whether or not he had listed his educational background?

A. It reflects that he did not, except as to his high school education at Stuyvesant.

Q. Now, Mr. Tavenner, directing your attention to Yellin's appearance before the Committee, what informa-
[fols. 76-77] tion—do you know what information the Committee was seeking from Yellin?

A. Yes, sir.

Q. What information was it seeking?

A. The Committee was undertaking to find out what knowledge he had of the execution of a Communist Party plan of colonization in the steel industry.

. . . . . .

[fol. 78] By Mr. Keeney:

Q. Mr. Tavenner, did the Committee reach any conclusions as the result of the hearings conducted in Gary?

Mr. Rabinowitz: May I request that it be answered yes or no, your Honor?

The Court: Yes; I think you should answer yes or no on that. Then if there is any further question about it, it can be brought out.

Read the question, please.

(question read)

The Court: I am not sure what you mean by "conclusions". Conclusions as to what, I mean, in relation to what?

Mr. Keeney: In relation to the testimony elicited at the Gary hearings; did they reach any conclusions with respect to what they were looking into in Gary, Indiana.

The Court: Do you understand the question now?

The Witness: Yes.

A. There were no announced conclusions.

[fol. 79] By Mr. Keeney:

Q. Were these conclusions reflected anywhere?

A. They are reflected in the annual report.

The Court: Annual report of what?

The Witness: Of the Committee, where the testimony was discussed.

Mr. Keeney: If the Court please, I would like to have marked as the Government's Exhibit 16, for identification, the Committee on Un-American Activities Annual Report for the year 1958. What we have here is a certified copy of the Committee's report.

Mr. Rabinowitz: I have no objection.

(Said instrument was marked Government's Exhibit 16, for identification.)

The Court: You are offering it?

OFFER IN EVIDENCE

Mr. Keeney: I am offering it.

The Court: Admitted.

(And thereupon Government's Exhibit 16 was admitted in evidence.)

Mr. Keeney: I would just like to establish, if I can, where the conclusions with respect to the Gary hearings are. Then [fol. 80] we can read them later.

. . . . . .

Cross-examination:

Mr. Rabinowitz: I would like to offer, as Defendant's Exhibits 1 and 2, for identification, these two documents, the first a photostat of a telegram signed by me and addressed to Mr. Tavenner, in relation to the appearance of the defendant, and while the telegram does not bear a date, perhaps counsel will be prepared to stipulate that it was [fol. 81] actually dated on February 6th.

Well, let me have them marked for identification, first, and then I will question the witness on them.

And, second, a response by Mr. Arens, who signs himself as Staff Director, addressed to me, which does bear date of February 6, 1958. I will ask that that be marked Defendant's Exhibit 2, for identification.

(Said instruments were marked Defendant's Exhibits 1 and 2, respectively, for identification.)

The Court: You are offering them?

Mr. Rabinowitz: I will have the witness identify them first.

By Mr. Rabinowitz:

Q. Mr. Tavenner, I would like to show you Defendant's Exhibit 1, for identification, and ask you whether that is a photostatic copy of a telegram that you received on February 6, 1958.

A. That is a telegram which was received in my office about that time. I was in Gary, and did not receive it myself.

[fol. 82] Q. I see. And can you identify this as a document taken from the files of the Committee, which constitutes an answer to that telegram of February 6th?

A. This is a photostatic copy of a copy of the telegram that was sent you.

OFFER IN EVIDENCE

Mr. Rabinowitz: May I offer these as Defendant's Exhibits 1 and 2 in evidence?

Mr. Keeney: No objection.

The Court: Admitted.

(And thereupon Defendant's Exhibits 1 and 2 were admitted in evidence.)

By Mr. Rabinowitz:

Q. Now, Mr. Tavenner, the Committee on occasion does hold executive sessions, does it not?

A. Yes, it does.

Q. And what is the practice of the Committee when a witness requests an executive session?

A. First of all, there is a House rule, which requires hearings to be held in open session unless the Committee votes that it be in closed session.

Q. Do you know what rule that is?

A. No, I cannot identify it by number.

[fol. 83] Q. Well, suppose I show you the House Rules which are already in evidence here, and see if you can tell us what rule it is.

A. It is an old rule, it is not a new rule; I can't just put

my finger on it at the moment. It's a rather long Act, and I have forgotten where it is in the Act.

The Court: You mean in the Rules?

The Witness: In the Rules.

Mr. Rabinowitz: The record may show, your Honor, that the witness is examining a copy of Government's Exhibit 13.

A. Yes, I have it here. It is Rule XI(g).

The Court: How long is it?

The Witness: Three or four lines.

The Court: I thought maybe you might read it.

By Mr. Rabinowitz:

Q. Will you read it, please.

A. "All hearings conducted by standing committees or their subcommittees shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session."

[fol. 84] Q. Will you also read subdivision (m)?

A. "If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

"(1) receive such evidence or testimony in executive session;

"(2) afford such person an opportunity voluntarily to appear as a witness; and

"(3) receive and dispose of requests from such person to subpena additional witnesses."

Q. Now, do you know whether or not the Committee took any action after the receipt of my telegram requesting an executive session, which is in evidence as Defendant's Exhibit 1?

A. The subcommittee arrived in Gary the day before the hearings began, and I know of no action that was taken after they arrived here. And I was here when the telegram was sent by you, that is, in Gary, at the time you sent the telegram to the Committee.

Q. The hearings opened on a Monday, didn't they?

A. Yes, which was the 10th.

[fol. 85] Q. The 10th. And that telegram is dated the 6th, which I think would have been the preceding Thursday.

A. I think that is correct.

Q. Now, do you know whether the Committee or the subcommittee took any action with respect to my request on either Thursday, the 6th, Friday, the 7th, or Saturday, the 8th?

A. Well, as I said, I was not in Washington, so I could have no personal knowledge.

Q. Is there any minute in any of the Committee's records which indicates any action by the Committee?

A. There is not anything to indicate a meeting of the subcommittee before its arrival here in Gary.

Q. Who is Mr. Arens?

A. Mr. Arens is the Staff Director.

Q. What are his duties in this Committee, as distinguished from yours?

A. Mr. Arens has the overall duty of running the Committee at the direction of the Chairman. By that, he is in charge of personnel, assignments of different people to different positions, and he acts for the Chairman in many matters.

Q. Is his authority limited to administrative matters, or [fol. 86] does he also determine policy questions for the Committee?

A. I should say no one on the staff determines the policy of the Committee. It is only done by conference with the Chairman of the Committee and sometimes with its members in consultation.

Q. Did Mr. Arens have the authority to pass upon a request for an executive session?

A. That would depend entirely upon his conferences with the Chairman.

The Court: Well, I guess what he means is independent of any contact.

Mr. Rabinowitz: Let me ask that.

By Mr. Rabinowitz:

Q. Independently of any conference with the Chairman, did he have the authority to pass upon such a request?

A. I do not know what general authority the Chairman may have given him in a matter of that kind.

Q. And you do not know of any specific authority that he received in connection with this specific request?

[fol. 87] A. No; I knew nothing of the request until a number of days after I arrived here in Gary.

Q. And when was that, that you first heard of the request?

A. I was sent the telegram and advised that you had sent such a message. Realizing that you might ask me that, I have tried to recall when I received it. And it would be a guess for me to try to recall it, as to whether I received it before the hearings began, or during the course of the hearings.

Q. In any event, it must have been after Mr. Arens sent his reply?

A. Well, I am certain that I was not consulted about your telegram before he replied, and I am certain that I did not know about your telegram before it was replied to.

Q. Did you have any conference with the chairman with respect to that request, when you found out about it?

A. I cannot recall.

Q. Congressman Walter was the chairman of that subcommittee?

[fol. 88] A. Yes, he was.

Q. Do you recall any conference with Congressman Walter with respect to the request?

A. I cannot at this time recall.

. . . . . .

By Mr. Rabinowitz:

Q. You are familiar with the provisions of subdivision (m), of Rule XI? You have the rule in front of you.

A. Yes.

Q. Did the Committee, to the best of your knowledge, ever consider the question as to whether the evidence requested of Mr. Yellin might tend to defame, degrade, or incriminate him, within the meaning of this rule?

[fol. 89] A. Incriminate him, or some other person?

Q. Incriminate any person.

A. The Committee has considered the meaning and the construction that it thought should be placed upon this rule.

Q. You mean on other occasions?

A. Yes, immediately when the rule was adopted. Two members of the Committee on Un-American Activities were on the Committee on Rules, and one member of the Committee was the one who prepared this rule that was presented. The construction of that rule has been placed before those two members, and the matter has been fully discussed by our Committee, and by me with them.

Q. And what is the construction that the Committee puts on it?

A. The construction is that that rule does not apply to the witness that is on the witness stand but to his testimony regarding some other person that you propose to ask about.

Q. Has this interpretation ever been presented to the House or to any other committee of the House for a ruling or interpertation, or to the House Parliamentarian, [fol. 90] or any other House officer who might have jurisdiction?

A. I believe the question was raised in the Hoffa case. It is the only other time that I have heard of it being raised.

Q. The Hoffa case. Was that a case arising in the House, or in the Senate?

A. Maybe I am mistaken about it being Hoffa. It did arise in connection with another case in the House, in which a witness sought to take the position that he did not have to testify in open session because to do so might tend to defame him or incriminate him. He was required to testify. Maybe I shouldn't guess at it, but I believe there is a contempt case pending now regarding that instance.

Q. You say that it is the Committee's interpretation of this rule that this rule applies only when someone who believes that he may be incriminated by some other witness's testimony, under those circumstances he may request that this testimony be taken in executive session?

A. No; I merely said that it was the construction that

this rule did not apply to the witness who was testifying; [fol. 91] that the witness who was testifying could not refuse to testify under Section 193 of the Code by contending that to do so might tend to incriminate him.

Q. What I really wanted to get was the Committee's interpretation of this rule, subdivision (m), and its applicability to a witness called before the Committee. Under what circumstances is it the contention of the Committee that this rule applies?

A. I don't know under what situations it might contend that it would apply. My own statement was, it was construed that it did not apply in the situation that you asked me about.

Q. Do you know of any circumstance in which it might apply?

A. Well, if I should guess, I would say this, that if the Committee—I might give you another construction, also, that would throw some light on it. It has also been construed that if the testimony would tend to incriminate a person as to whom there had already been testimony of such a character, that the Act was certainly not intended to cover a situation of that kind.

Q. You have given us two cases in which the rule does [fol. 92] not apply. Can you give us a case in which the rule would apply?

A. I was going to say that it would be my guess, and that's all I can do, is guess about it, that if the Committee contemplated asking a witness a question about the Communist Party membership of some individual as to whom it had no information, no reliable information at all that that person was a Communist Party member, in that situation I am certain the Committee would do what it has often done, that is, to go into executive session and not ask such a question in public. In fact, I have never asked a witness a question of that kind in the eleven years that I have been with the Committee unless we had some information, reliable information, indicating that. And in that situation I would guess the Committee would always take that evidence in executive session, and I think they should, whether there was a rule on it, or whether there wasn't. And I know that's what we did for many years before there ever was a rule.

Q. So that it is your understanding that the rule ap-[fol. 93] plies—that the rule would never apply for the protection of the witness who testifies, but only for the protection perhaps of persons concerning whom he is testifying; is that right?

A. In substance.

Q. Now, the House Committee has rules of its own, doesn't it?

A. Yes, sir.

Q. I show you this and ask you whether you can identify that as a copy of the Rules of Procedure of the House Committee.

A. Yes, sir.

Mr. Rabinowitz: May I ask that this be marked as Defendant's Exhibit 3?

(Said instrument was marked Defendant's Exhibit 3, for identification.)

Mr. Rabinowitz: May I offer this in evidence, your Honor?

The Court: Any objection?

Mr. Keeney: No objection.

The Court: Admitted.

(And thereupon Defendant's Exhibit 3 was admitted in evidence.)

By Mr. Rabinowitz:

Q. You are familiar with these rules, aren't you?

[fol. 94] A. Yes.

Q. I would like to read to you a provision of these rules, and it is Rule IV-A. The heading is "Executive and Public Hearings," and subdivision A is "Executive"; and it says:

> "If a majority of the Committee or Subcommittee, duly appointed as provided by the rules of the House of Representatives, believes that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation, or the reputation of other individuals, the Committee shall interrogate such witness in an Executive Session for the purpose of determining the necessity or advis-

ability of conducting such interrogation thereafter in a public hearing."

Are you familiar with that rule?

A. Quite familiar with it.

Q. And does that rule operate ever for the protection of a witness who is called?

A. Certainly.

Q. Did the Committee consider at all the applicability of [fol. 95] that rule to the request I made on behalf of Mr. Yellin?

A. It was not discussed with the Committee.

Q. Did the Committee even know I sent the telegram?

A. I am not sure, because I stated that I cannot remember when I received word of the action that had been taken. I may have discussed it; I am sure if I had received the word I would have told the Chairman about it; I just cannot recall whether I did, or not.

Q. You do recall that I attempted to raise this question at the opening of the hearing?

A. I do.

Q. And I was not permitted to do so by the Chairman: you recall that?

A. I recall it. And it may be that that was the first knowledge I had of the telegram; but I wouldn't say that —that would be a guess.

Q. Mr. Tavenner, you stated that you have been counsel for this Committee, I think you said for eleven years?

A. Yes, sir.

Q. And prior to that, what was your occupation?

A. I had been Assistant United States Attorney for [fol. 96] seven years, and United States Attorney for eight years.

Q. The Committee had for quite some time, had it not, conducted quite extensive hearings into this matter of infiltration by the Communist Party into basic industry, to use the Committee's formulation of what happened? That is true, isn't it?

A. Yes.

Q. And it had conducted such hearings with respect to the steel industry in Buffalo, had it not?

A. There was some testimony at Buffalo regarding it.

Q. Rather extensive testimony, wasn't it?

A. I did not participate in the hearings. I know that was part of the purpose. There were a number of other purposes for the hearing.

Q. Did you ever read the testimony in the Buffalo hearings?

A. Yes.

Q. Weren't there a number of witnesses who testified in very considerable detail concerning the program and policy of the Communist Party with respect to this subject in the steel mills?

A. There were a number of witnesses on many subjects [fol. 97] at that hearing in Buffalo. I haven't attempted to ascertain the proportion who testified about any one matter.

Q. But, in any event, this subject was considered?

A. Certainly.

Q. And it was the subject of a subsequent House Committee report, was it not, that is, in the annual report?

A. Yes.

Q. And the same subject had been discussed at hearings in Flint, had it not?

A. Yes.

Q. Did you conduct the Flint hearings?

A. I did.

Q. What industry was under consideration in Flint?

A. The automobile industry, and accessories, automobile accessory plants. And that was really the first information that the Committee had to verify earlier testimony that such a plan existed.

Q. And the Committee had conducted hearings with respect to such a plan in North Carolina; is that right?

[fol. 98] A. No, I do not recall that.

Q. May I call your attention to the testimony given that is already in evidence, the Yellin testimony, specifically—I am sorry, it isn't the Yellin testimony; it is the Lautner testimony which is already in evidence, and it appears at page 1968 of the Lautner testimony.

You, Mr. Tavenner, said, at the bottom of page 1968: "I should remind the subcommittee that we received a considerable amount of evidence at Flint, Mich., of probably 8 or 10 instances of colonization of the exact type that you described."

Do you recall that statement by you during Mr. Lautner's testimony? It is a the bottom of the page.

A. Yes, I see it. That is correct.

Q. And then you recall Mr. Walter saying or referring to a case in North Carolina, in which similar evidence had been presented before the Committee?

A. I see it written there, but I don't know whether it happened before this Committee, or not. I know that I had never heard of it.

Q. I see. Then you did refer to what you called the inci-
[fol. 99] dent of Colorado University?

A. Yes.

Q. Where you had taken testimony with respect to the same thing?

A. Yes, that's correct. Colorado and Flint, Michigan, are the two places that I referred to.

Q. Had testimony been taken with respect to this subject at Baltimore?

A. Yes, it had.

Q. Was that prior to the hearings in Gary?

A. Now, just a moment. The hearings in Colorado had nothing to do with basic industry. They did have to do with colonization. The hearing in Baltimore did have something to do with basic industry and steel, yes. I think that sets the record straight.

Q. Was that prior to or after the Gary hearings?

A. Prior to.

Q. Were similar investigatio s carried on in New England?

A. Yes; I believe at New Haven there was some testimony on the subject,

Q. Do you recall whether the Committee had taken testi-
[fol. 100] mony at Newark with respect to the same subject?

A. In the steel industry?

Q. No; the question of infiltration into basic industry.

A. We had hearings in Newark, New Jersey; in fact, we had hearings there twice. It is difficult for me, without referring to memorandum, to recall all of the subjects that were covered by those hearings. At the moment, I just don't recall basic industry, but it's possible that we did, whether it would be actually termed that. I remember the names of some of the witnesses, some of the things that

occurred, but whether you would state it was basic industry, or not, I would have to refresh my recollection.

Q. That would depend also on the problem as to what is basic industry; there might be a difference of opinion on that?

A. There wouldn't be much room for difference about that.

Q. The Committee from time to time had made reports on this subject, had it not, reports to the House?

[fol. 101] A. Yes, whenever it held an investigation regarding it, it was covered by a report.

Q. Do you recall whether any bills have been introduced into Congress as the result of these investigations and reports that you have referred to, prior to the Gary hearing?

A. Well, it is difficult to say to what extent information on a particular subject inspired a bill, but certainly it has been considered in connection with legislation that has been offered, or suggested, or recommended.

Q. And the only legislation that you can refer to—and correct me if I am wrong—which was the result of this investigation over a period of many years involving the Communist infiltration into basic industry was Congressman Walter's bill which related to the redefinition of the word "organize".

Was there anything else? I don't recall whether you mentioned anything else.

A. That was the only thing that I was asked about.

Q. Were there other bills introduced on this subject?

[fol. 102] A. Yes, I think the Chairman's bill relating to work in defense plants is—

Q. What bill is that?

A. H.R. 8121.

Q. What time?

A. 1960; offered in February, of 1960.

The Court: Didn't you mention another bill, too?

The Witness: Yes, sir, the Scherer bill.

By Mr. Rabinowitz:

Q. What bill was that, do you know the number of that?

A. H.R. 3693, which is the Defense Facilities Protection Act of 1959.

Then to what extent this type of evidence—of course, this type of testimony is furnished by reports to every member of the House, and to what extent it is utilized by them, either in the preparation of other bills, or the voting upon bills, there would be no way to ascertain. But there is a provision of another statute, which is very important, and which deals with the matter that this Committee was [fol. 103] studying, and this type of information would have been and must have been of extreme value to anyone who voted on that bill.

Q. What bill was that?

A. Public Bill 86-259. It is sometimes referred to as the Griffin-Landrum Bill, and is known as the Labor-Management Reporting and Disclosure Act of 1959, and it contains some very pointed provisions.

Q. You are referring to Section 504?

A. 504(a), yes, sir, including the penal provision in 504(b), regarding the position of officers, trustees, and agents of unions who are members of the Communist Party, or have been at any time within the past five years.

Q. I would like to show you, Mr. Tavenner, the Annual Report of the Committee for the year 1956, and call your specific attention to various sections of the report, specifically at pages 31 and 32. That refers to Committee investigations into the subject of infiltration, does it not, Communist infiltration into industry?

A. I notice it refers to "The overall results confirmed again that there is no section or community in this country [fol. 104] immune from Communist Party intrigue, ideology, and propaganda."

Q. I am talking specifically about the problem of infiltration into industry.

A. Where do you see that? I took it at the page you handed to me.

Q. I am referring to the second full paragraph on page 32.

A. Yes, in this treatment of the general results of investigation in communities there is a paragraph.

Q. Communities where?

A. In the North Carolina area.

Q. May I refer your attention to page 39. Does that contain also reference to infiltration by the Communist Party into industry?

A. Yes. I think it is marked here, isn't it?

Q. Yes. And what area was that?

A. That was in Denver, Colorado.

Q. May I call your attention to pages 42 through 46, inclusive, and see whether that does not also refer to Communist Party infiltration, mostly in the St. Louis area?

A. It relates to testimony in the United Electrical, Radio [fol. 105] and Machine Workers of America and the National Maritime Union and in the general colonization at the General Motors plant in St. Louis, yes, sir.

Q. May I call your attention to page 47 of that report?

A. Yes, sir, I have it.

Q. Is there also reference to infiltration by the Communist Party in the New Haven area?

A. Yes; it says "A case of 'colonization' came to light".

Q. Is the word "colonization" in quotes there, by the way?

A. Yes. ". . . came to light when a witness identified as a Communist Party member withheld the fact that he had completed the scholastic requirements for a degree when applying for his present job as a bench hand with the Singer Manufacturing Company."

Q. May I call your attention to page 49 of that report?

A. Yes, sir.

Q. Does that also refer to instances of infiltration, this time in Youngstown?

[fol. 106] A. It does.

Q. That is the steel industry in Youngstown?

A. Yes, sir.

Mr. Rabinowitz: May I offer this, your Honor, as the defendant's exhibit next in order?

The Court: Has it been marked?

Mr. Rabinowitz: No, I am offering it now, to be marked.

(Said instrument was marked Defendant's Exhibit 4, for identification.)

Mr. Rabinowitz: I would like to offer that exhibit, your Honor. It is the Annual Report for the year 1956.

Mr. Keeney: No objection.

The Court: Admitted.

(And thereupon Defendant's Exhibit 4 was admitted in evidence.)

By Mr. Rabinowitz:

Q. Now I have just handed you, Mr. Tavenner, a portion of the Annual Report of 1957, and call your attention to page 21, and I think page 30.

Does that also report for the Committee on other instances of what the Committee calls infiltration in industry?

[fol. 107]

A. I see from a hearing in New Orleans "infiltration and domination of waterfront and maritime unions".

Q. That's on page 21?

A. Yes.

Q. Now on page 30, I think—well, those were the Buffalo hearings, to which we have already referred; that's right, isn't it?

A. Yes.

Mr. Rabinowitz: May I offer this as the exhibit next in order, your Honor?

The Court: Has it been marked?

Mr. Rabinowitz: No. May it be marked?

(Said instrument was marked Defendant's Exhibit 5, for identification.)

Mr. Keeney: No objection.

The Court: Admitted.

(And thereupon Defendant's Exhibit 5 was admitted in evidence.)

By Mr. Rabinowitz:

Q. Now, all of these hearings that we have referred to in the annual reports or portions of reports for the years 1956 and 1957 were prior to Gary, weren't they? The Gary [fol. 108] hearing was in 1958.

A. Yes, that's right.

Q. I assume that the report here merely summarizes rather extensive oral testimony that was taken by the Committee at each one of these places. That is correct, isn't it?

A. No, it was rather occasionally referred to in some reports. In other reports, at other times, more emphasis was placed upon it.

Q. In any event, it represents testimony taken from many witnesses at many hearings in various places throughout the country?

A. It refers to what testimony was taken, yes, sir.

Q. This is testimony that had been taken over a period of several years?

A. Yes, sir.

Q. Now, prior to the Gary hearing, did you, or any member of your staff, interview Mr. LaFleur?

A. Prior to what time?

Q. The Gary hearing.

A. Yes.

Q. And had he presented to you reports that he had made at various times to the F.B.I.?

[fol. 109] A. No.

Q. Did he discuss with you the purport of his testimony?

A. I discussed with him what he knew about the situation in the steel plants at Gary, and obtained from him all of the information that I could prior to putting him on the stand and questioning him.

Q. And most of this, I assume, was the subject of questions that you did put to him on the stand?

A. Well, I would say the questions I did put to him on the stand were matters which I had acquired some information about from him in a general way.

Q. So that you knew, before he got on the stand, generally speaking, what he was going to testify to?

A. I knew what I was going to ask him about, and, in a way, what information he would be qualified to give.

Q. And the same was true about Mr. Lautner, wasn't it?

A. Only in a very general way. I had talked to Mr. [fol. 110] Lautner, also, and he gave me to understand that from his long activity in the Communist Party as a high functionary he knew of the Communist Party plan with regard to colonization and would testify. As to what he was going to say, I did not know or if he testified.

Q. Well, did any other member of your staff interview him with respect to the subject?

A. I am the only one who did interview him with respect to it.

Q. Now, you stated, I think, that the Committee commenced its preliminary investigation into the Gary situation in October, of 1957; is that right?

A. That's correct.

Q. And can you tell us, without disclosing any confidential material, what steps the Committee took in carrying on the investigation? I don't want the names of people; I just want to know the procedure that was followed.

A. The Director of the Committee assigned a member of the staff to come out to Gary and look into the situation first, to determine whether there was a situation existing that justified a hearing, and the investigator did.

[fol. 111] Q. Did the investigator make reports to the Committee?

A. No, he discussed the matter with the Director.

Q. You mean he made oral reports?

A. Oral reports, and there could have been written reports made, too.

Q. In the course of this investigation, did the investigator speak to all of the people who were ultimately subpoenaed?

A. I don't know.

Q. Do you know whether he spoke to any of the people who were ultimately subpoenaed?

A. I do not know.

Q. Do you know whether he spoke to anybody at all in Gary?

A. I know that he was here making an investigation. As to how many people he spoke to, and who they were, I don't know.

Q. Do you know whether, prior to issuing a subpoena to Mr. Yellin, the Committee or any of its representatives made any effort to interview him, to determine, as you did with LaFluer and Lautner, what his testimony would be?

A. I recall this, that there was considerable doubt about [fol. 112] subpoenaing him because we learned that he was not in Gary any longer, and finally found him in Denver.

By Mr. Rabinowitz:

Q. Is it the practice of the Committee to interview witnesses, prior to subpoenaing them, to determine whether they have information which is of value to the Committee?

A. It depends upon what type of information we have relating to the individual. Having information as to the Communist Party membership of Mr. Yellin, we knew he was a member of the Communist Party, if that testimony was reliable, and we thought it was.

Q. Is that the reason. I am sorry.

A. So that is one reason for not going to see him. We didn't know whether he would co-operate or not. We put [fol. 113] him under oath, with the hopes that he would co-operate.

Q. Well, is this the normal practice of the Committee, to subpoena witnesses for a public hearing without making any effort to ascertain in advance whether they will or will not answer the Committee's questions?

A. No, I wouldn't say that that is the practice.

Q. The normal practice is to interview such people, or the normal practice is to refrain from interviewing such people?

A. The normal practice is to interview people if there is any chance in the world of obtaining co-operation from them.

Q. And you came to the conclusion that there was no chance in the world of obtaining co-operation from Mr. Yellin, and therefore you did not make any effort to do it?

A. As to Mr. Yellin, I had no reason to believe one thing or another. He was in Denver; he had not been interviewed; no effort was made to interview him. I doubt if he had been here, that he would have been interviewed.

Q. Why?

[fol. 114] A. Because of the fact that we knew of his Communist Party membership; we knew of his employment; we knew of his concealment of certain facts in his application. We wanted to put him under oath and get him to advise the Committee of the reasons for that, and whether it was pursuant to a Communist Party plan to colonize that industry, and the extent to which that colonization was progressing.

Q. Prior to the time that Yellin took the stand and was sworn at the Gary hearing, had you reached any conclusion, one way or the other, as to whether Yellin would or would not co-operate with the Committee?

A. I never talk to him; I didn't know.

Q. You had no way

A. I don't know whether you talked to me, or not, about it. If anybody did, you did.

Q. Yes, that's true. I must confess, Mr. Tavenner, I don't know whether I spoke to you about it, or not.

A. I don't think you did.

Q. Prior to the time that he was called, then, you had [fol. 115] no idea at all as to whether he was going to answer or refuse to answer questions on one ground or another; is that right?

A. I had hoped.

Q. Well, was it a very strong hope, or a very dim hope?

A. Yes, I am a very hopeful person. Sometimes it pays off.

. . . . . .

By Mr. Rabinowitz:

Q. You know, Mr. Tavenner, do you not, that something over eighty per cent of all of the witnesses who are called by this Committee, speaking now over a period of years, have refused to answer questions put by the Committee?

A. I never heard the figures stated before, I don't know that, but I do know that it is a large percentage who do rely upon the Fifth Amendment and refuse to give testimony about things that the Committee is of the opinion that they are bound to know.

[fol. 116] Q. It is not only a large proportion but a very large proportion of witnesses who refuse to answer?

A. I say a substantial number of witnesses take the Fifth Amendment, yes, sir.

Q. Or, as Mr. Yellin, for some other reason; Mr. Yellin relied on the Watkins case and the First Amendment.

A. Yes; since the Watkins case came down, some relied solely on that, and then later on the Fifth Amendment.

Q. My compilation, Mr. Tavenner, shows that in the Eighty-fourth Congress eighty-two and one-half per cent of the witnesses refused to answer on one ground or

another; and in the Eighty fifth Congress eighty-three per cent; and in the Eighty-sixth Congress, insofar as the hearings have been printed, eighty-six per cent.

Does that seem to you to be in accord with your general experience?

A. As to size in percentage, I would have no idea in the world, but as to the trend, I certainly agree with you [fol. 117] that you are correct. It is becoming more difficult and more difficult to get people to give faces regarding Communist Party activities, thus increasing tremendously the problems of this Committee and the Congress.

Q. But the fact is, despite the fact that over eighty per cent of the witnesses called by your Committee do not answer, and despite the fact that you had information in your possession with respect to Mr. Yellin's views, you had no idea at all when you called him as to whether he was going to answer questions or not answer questions?

A. I didn't particularly have an idea one way or the other.

Q. The telegram from me gave you no hint?

A. No, it didn't. We have had that same type of telegram quite a number of times and I don't recall of an instance where any one of them ever co-operated with the Committee.

Q. So that the telegram was some sort of a tip to the Committee that he probably would not co-operate?

A. I don't know; there is no way to know definitely [fol. 118] about it.

Q. What information did you hope to get from Yellin which you had not already received from other witnesses at Gary, Buffalo, St. Louis, Baltimore, and these other many hearings, many places that you had had hearings at?

A. We know nothing about the actual activities of the Communist Party in the steel plants in Indiana as of the time of this hearing, or shortly before. Mr. LaFleur, who did testify, according to my recollection got out of the Communist Party in 1950. This witness, Mr. Yellin, as to whom we had testimony by several people, had been a member of the Communist Party at Michigan University, and had left there and come down and taken employment in Gary.

Q. Please, Mr. Tavenner.

A. You are asking for information.

Q. You have no personal information on this. I ask you——

Mr. Keeney: If the Court please, he asked him the question, and I think he is entitled to answer.

[fol. 119] Mr. Rabinowitz: If the answer is going to be responsive, but if the answer is not going to be responsive, I think I have a right to interrupt the witness.

The Court: Now, wait a minute.

Have you finished your answer?

The Witness: No, sir.

The Court: Well, read the question.

(question read)

Mr. Rabinowitz: May I ask that the witness be directed to answer that question?

Mr. Keeney: Excuse me, if the Court please, that question is an Open Sesame and the witness——

The Court: Well, I suppose he would have to say what he already had, what information he already had, in order to find out what he hoped to get in addition, wouldn't he?

By Mr. Rabinowitz:

Q. Well, with that in mind, will you state what information you had, and what additional information you hoped to get?

[fol. 120] The Court: You may finish your answer.

A. As I was stating, the Committee had sworn testimony by two persons that Yellin was a member of the Communist Party at Michigan University. We had evidence that he had been transferred there from New York City; that he came from Michigan University down here, down to Gary, Indiana, and there became employed in the steel plants.

By Mr. Rabinowitz:

Q. You had sworn testimony to all this?

A. Ultimately, sworn testimony.

Now, if you are drawing that distinction, the part about his employment in the steel industry, that information we

obtained from Mr. LaFleur and the investigation that the investigator made in examining the records of employment. We knew, from the statement made, by the information obtained from Mr. LaFleur, that Mr. Yellin had been active in Communist Party activities while employed by steel, the steel companies in Gary, and he so testified later, and it is in the record here.

[fol. 121] Now, with that information relating to Mr. Yellin, we felt certain that Mr. Yellin was in a position, if he would do so, to tell this Committee a great many things regarding the plan of the Communist Party to infiltrate the steel industry here, and to building up the Communist Party from its grass roots level, and just what the Communist Party plans were to make these bright young men leaders who did this thing of colonizing. He could have told us those things, from the position that he was in, if we were correct about his position, had he been willing to do so.

But not a single witness who has been identified—who has been identified—as a colonizer in any of the places that you have mentioned, that I can recall, has ever admitted it, or ever testified that he had been a colonizer.

Q. Oh, you know that isn't so. Maybe you don't know.

A. Maybe you can refresh my recollection.

Q. You remember the Buffalo hearings, don't you?

A. Yes.

[fol. 122] Q. Weren't there people who so testified at Buffalo?

A. I say I was not at Buffalo. There may have been someone to so testify, but in no hearing that I have been connected with, and this began at Flint, Michigan, did anyone ever admit it.

. . . . . .

By Mr. Rabinowitz:

Q. You say that your investigation had developed certain facts concerning Mr. Yellin, and that you had testimony under oath about various things that you have just described in your last answer?

A. That was public testimony that I was referring to, the testimony of two witnesses.

Q. You are talking about testimony a long time ago, aren't you, three or four years before this?

A. It was in 1954.

Q. Four years before this hearing?

A. Three years before the investigation began.

Q. And had you any information concerning Mr. Yellin's political views as of the time of the Gary hearing?

[fol. 123] A. I have never asked anyone about his political views.

Q. Have you any information concerning Mr. Yellin's membership in the Communist Party at any time after 1954?

A. Yes.

Q. You did have information?

A. Yes.

Q. What was that information?

A. The information that I referred to, from Mr. LaFleur, who testified.

Q. Well, when did he leave the Communist Party, wasn't it about that time?

A. I beg your pardon; I thought you were talking about the time at which I received the information.

Q. No, I am talking about the time of Mr. Yellin's alleged Communist Party membership.

A. Will you state your question again? I am confused on it.

Q. You said you had sworn testimony concerning Mr. Yellin's alleged membership in the Communist Party as of 1954. Did you have any——

A. No, again, the testimony which we received in 1954 [fol. 124] related to his Communist Party membership in 1949.

Q. So that the last information you had with respect to Mr. Yellin's Communist Party membership was that he had been a member in 1949; is that right?

A. No, sir.

Q. Did you have any information concerning membership at a later date?

A. Yes.

Q. And what was that information?

A. That he was active in the Communist Party, in Communist Party activities, while employed in Gary, after leaving the University of Michigan.

Q. And that was from Mr. LaFleur?

A. From Mr. LaFleur.

Q. And how late did Mr. LaFleur's testimony go?

A. I would have to refresh my recollection by looking at his testimony, but I believe it was certainly not later than 1952 and maybe—yes, 1952; and it may have been only to 1950 or 1951.

Q. Did you have any information concerning the alleged Communist Party membership of Mr. Yellin subsequent to [fol. 125] the date that Mr. LaFleur testified about?

A. No, sir, not according to my recollection.

Q. Did you have any report from the F.B.I.?

A. No, sir.

Q. On Mr. Yellin?

A. No, sir, we don't obtain reports from the F.B.I.

Q. I call your attention, just for the purpose of refreshing your recollection, to page 2013 of the LaFleur testimony, and ask you to see whether that doesn't refresh your recollection that LaFleur testified that he left the Communist Party in 1952.

A. That is correct; that's the date that I referred to, 1952.

Q. And this testimony was in 1958, or about five or six years after the last information that you had with respect to Mr. Yellin; is that right?

A. Yes, sir.

Q. You asked Mr. Yellin where he resided prior to September, 1957?

A. Yes.

Q. Did you have any information as to where he resided prior to September, 1957?

[fol. 126] A. Yes.

Q. And what information was that?

A. From his work record, that he had been employed here in Gary at the steel plant.

Q. At the steel plant. So that you knew that he lived

A. We knew he had worked in the steel plant.

Q. By the way, when you asked that question, you weren't referring to his street address, were you; you were referring to the city?

A. The fact whether he lived here in the Gary area was the point.

Q. And you had in your files——

A. If he was the same person.

Q. And you had in your files work records from I suppose his employer, indicating that he had worked in Gary until sometime——

A. Our investigator had procured information as to his application for employment, and the fact he was employed, and had been.

Q. And that he lived in Gary prior to September, 1957?

A. That's right.

[fol. 127] Q. So that you had in your files information answering that question which was the subject of the inquiry?

A. If correct, yes.

Q. Further, you had information in your files; you have already described sworn testimony, to the effect that on the 23rd of June, 1949, or about that time, Yellin had been a member of the Communist Party?

A. That's correct.

Q. So that you knew the answer to that question, which is Count No. III, if correct?

A. Yes. When I say we knew it, I say we had sworn testimony about it. If he had sworn that he wasn't, we still wouldn't have known who was telling the truth.

Q. You thought it possible that he had left the Party in the interim?

A. We didn't know.

Q. But it was possible, wasn't it? After all, many people did leave the Communist Party between 1949 or 1952 and 1958; that's true, isn't it?

A. Oh, yes; yes, sir.

Q. But you never sent an investigator to ask Mr. Yellin?

[fol. 128] A. No, sir.

Q. Again, will you say why?

A. Well, I don't know of any particular reason why they didn't ask him. I guess, if he would have been easily available, he would have been asked.

Q. Did you ask the other witnesses at the Gary hearings who were easily available?

A. I don't know. As I told you before, I didn't know who the investigator had interviewed, but I knew they had not interviewed Mr. Yellin because he was living in Denver.

Q. Well, you knew whether they had interviewed the

others, didn't you? Or didn't they tell you that before you put them on the stand?

A. I think I would have known it, but I say I do not know it, and I do not know whether they did, or not.

Q. Well, didn't they report to you on that subject?

A. I am reasonably certain that if he talked to one of them, or gave them an opportunity to talk, why, the investigator would have told me; and if he did, I don't remember it.

[fol. 129] Q. Would the investigator have told you if he had approached these people and they had refused to talk, would the investigator have told you that? In other words, would the investigator have said that so and so——

A. They normally tell me whatever happened. Of course, we have had witnesses say they wouldn't talk, and then when put on the witness stand they have told the truth.

Q. Eighty-odd per cent of them still refuse to talk?

A. Yes, and I expect eighty-odd per cent of them are members of the Communist Party.

Q. I assume the conclusions the Committee reached with respect to the Gary hearings are the conclusions that are set forth in the Committee's Annual Report for 1958, and in the synopsis which appears before the printed testimony?

A. Those are matters which were approved by the members of the Committee. I wouldn't say it constitutes all their views about, by any means.

Q. No, of course not. Do you know of any other written [fol. 130] views of the Committee on the subject of the Gary hearings?

A. Only such as a member might make in connection with any argument he makes on the floor of the House or any consideration that he gives to a bill.

Q. No; I am talking about action by the Committee, not by any individual member.

You don't know of any other?

A. No, I do not.

By Mr. Rabinowitz:

Q. You say you were unsure when you called Yellin to the stand on February 10, 1958, whether he would or would not answer questions; is that right? Am I summarizing your testimony correctly?

A. Well, while you were remaining seated I tried to think over this matter again. I know we engage in the practice now—whether we did then, I don't know—of including a statement on the subpoena itself, suggesting to [fol. 131] every person to get in touch with the Committee. I don't recall now whether that was prior to Yellin's appearance, or not. I don't know who served the subpoena on Mr. Yellin; I don't believe it was a member of the staff. I just don't know what the situation was.

Oh, he of course was served in Denver, so no one could have seen him before the date set for his appearance, so I am certain no one did.

Q. That isn't the question I asked. Let me repeat the question:

At the time that you called Yellin to the stand, which was February 10, 1958, you did not know whether he was likely to fall within the eighty per cent of the witnesses who do not answer questions or the twenty per cent of the witnesses who do answer question; is that right?

A. I would say that's right.

Q. Then why did you not comply with the request for an executive session?

A. Well, in the first place, I had no request in regard to it. One was made to my office after I came out here. With the information that the Committee had regarding his membership, I would not have recommended—I will say this—[fol. 132] I would not have recommended to the Committee, if they had asked, that he be heard in executive session.

Q. Why not?

A. Because we knew that he was a member of the Communist Party and he was in a position to give the Committee information, if he wanted to.

Q. You knew he had been a member of the Communist Party?

A. Yes.

Q. Many years before?

A. Yes.

Q. You didn't know whether he still was?

A. If you had come and told me, now, this man has considerable information that we wants to give that involves other people, and it ought to be thoroughly investigated before being made public, I would certainly have recommended that he be heard in executive session, but you never indicated that he was willing to do anything.

Q. I did indicate that he wanted an executive session though, didn't I?

A. I say in the way of giving testimony.

Q. And you did not feel that it was advisable to call an executive session for the purpose of determining whether [fol. 133] he was prepared to give testimony, or not?

A. My recollection is that he was sworn in as a witness, and you were sitting by his side, and at the beginning of the testimony you asked that we make a part of the record the telegrams which you had sent to the Committee. You didn't offer any suggestion then that he would give any information that would be of such a character that it ought to be taken in executive session to protect anybody while we were investigating to see whether the witness was telling the truth, or not.

Q. By the way, the Chairman said that he would consider in executive session—I assume that means an executive session of the Committee itself—whether the telegrams would be made a part of the record.

Was that matter ever considered?

A. I don't recall that it was; well, I can say that I don't know of it having been done, and I believe I would know, if it had been.

Q. In any event, you still say that at the time you called Yellin, you had no idea as to whether he was going to fall [fol. 134] in the twenty per cent, or in the eighty per cent, under all of the circumstances that were present at that time, including my telegram?

A. If you mean by "no idea," within reason, whether I thought one thing or another, it would be a guess; and my guess would be on the eighty per cent side that you mention, I think. But as to what he was going to do, you can't tell until you put the man on the witness stand.

Mr. Rabinowitz: That is all, your Honor.

The Court: Any redirect?

Redirect examination.

By Mr. Keeney:

Q. Mr. Rabinowitz asked you whether or not you received F.B.I. reports on Yellin, Mr. Tavenner.

Let me ask you this, for the purpose of clarity: Does the Committee receive F.B.I. reports?

A. No, sir.

Q. Do you have access to F.B.I. files?

A. No, sir.

[fol. 135] Q. Do you receive any information from the F.B.I. with respect to the activities of individuals?

A. No, sir.

Q. How do you gather your information?

A. By investigation by Committee members and such sources as they can develop.

Q. Investigations such as were conducted in the Gary area?

A. Yes.

Q. Now, you stated in reponse to Mr. Rabinowitz's question, that one LaFleur testified that he left the Party in 1952, and LaFleur identified Yellin as a member of the Communist Party in the steel industry in Gary.

Assuming that Yellin had ceased to be a member of the Communist party in 1952, right after LaFleur testified, would his testimony still have been of interest to the Committee in connection with colonizing?

A. I am sure it would.

Mr. Keeney: If the Court please, may I have these marked [fol. 136] as Government exhibits, H.R. 3693, 86th Congress, 1st Session, and H.R. 8121, 86th Congress, 2d Session?

(Said instruments were marked Government's Exhibits 17 and 18, respectively, for identification.)

By Mr. Keeney:

Q. Mr. Tavenner, I am handing to you Government's Exhibit 17, H.R. 3693, a defense facilities protection bill, and ask you whether or not the Scherer referred to at the top of the bill is Congressman Scherer, of your Committee?

A. Yes, sir; a member of the subcommittee that sat in Gary.

The Court: Is this the bill that you referred to earlier in your testimony?

The Witness: Yes, sir.

By Mr. Keeney:

Q. This was the bill that you referred to when you were examined by Mr. Rabinowitz?

A. And also by you.

OFFERS IN EVIDENCE

Mr. Keeney: If the Court please, I offer this in evidence.

[fol. 137] Mr. Rabinowitz: No objection.

The Court: Admitted.

(And thereupon Government's Exhibit 17 was admitted in evidence.)

By Mr. Keeney:

Q. Mr. Tavenner, I hand you Government's Exhibit No. 18, H.R. 8121, which is a bill to amend the Subversive Activities Control Act of 1950 so as to authorize the Secretary of Defense to provide for a security program with respect to defense contractors and their employees.

I ask you if that is one of the bills to which you referred when you were cross-examined by Mr. Rabinowitz.

A. It is.

Mr. Keeney: If the Court please, I ask that this document be admitted in evidence.

The Court: Any objection?

Mr. Rabinowitz: No objection.

The Court: Admitted.

(And thereupon Government's Exhibit 18 was admitted in evidence.)

[fol. 138] By Mr. Keeney:

Q. Mr. Tavenner, when you were being examined by Mr. Rabinowitz with respect to this subsection (n) of the House Rules, you made reference to a statutory provision, 193——

A. Did you say subsection (n) or (m)?

Q. (n).

Mr. Rabinowitz. (m), as in Mary.

Mr. Keeney: (m) as in Mary?

A. It is (m).

Mr. Keeney: Excuse me.

By Mr. Keeney:

Q. When you were asked concerning this, you made reference to the statute, 193. Were you referring to 2 U.S.C. 193?

A. Yes; 2 U.S.C. 193.

Q. What was the significance of your reference to that statute?

A. That statute is the one which places the duty upon a witness to answer questions that are propounded by the Committee, even if the answers thereto might tend to degrade him. I believe that's the language.

[fol. 139] Q. It denies the witness the right to refuse to answer questions on the ground that it would defame or incriminate him; is that right?

A. Yes.

. . . . . .

[fol. 140] Mr. Keeney: The Government has rested, sir.

. . . . . .

MOTIONS OF DEFENDANT TO DISMISS, ETC.

Mr. Rabinowitz: Your Honor, I move to dismiss on the ground that the Government has not established a case.

And in addition to a general motion to dismiss on that ground, I move to dismiss Counts II and IV, on the

ground that they are vague and in violation of the defendant's rights under the Sixth Amendment.

[fol. 141] And, in addition, I move to dismiss Count III, on the ground that no pertinency has been shown.

Would your Honor want to hear argument on that, or shall we go ahead?

RULING AS TO DEFENDANT'S MOTIONS RESERVED

The Court: Not now. If agreeable to both counsel, I will reserve any ruling, and also defer argument on the motions, because of the time situation.

MR. RABINOWITZ: Congressman Walter, please.

FRANCIS E. WALTER, a witness called on behalf of the defendant, having first been duly sworn, testified as follows:

Direct examination.

By Mr. Rabinowitz:

Q. Congressman, you are Chairman of the House Committee on Un-American Activities?

A. I am.

Q. And how long have you had that position?

A. Six years, approximately.

Q. That would be beginning with the 84th Congress, in 1955?

A. That's right.

Q. Prior to that, how long had you been a member of [fol. 142] the Committee?

A. Five years. In 1949, I think I was elected to the Committee.

Q. How long have you been a member of Congress?

A. Twenty-seven years, continuously.

Q. During that time I assume that you have, like other congressmen, consistently served as a member of committees of the House?

A. Well, in my first term I was on a number of unimportant committees; in my second term, I was elected to the Committee on the Judiciary, and I have served contin-

uously on the Judiciary Committee; I am now the ranking Democrat on that Committee.

Q. And have you served on other committees, as well?

A. Yes. In 1933, I was on the Committee on Invalid Pensions, Claims, and I think Revision of the Laws.

Q. And are you on any committees now, other than the Judiciary Committee and the Un-American Activities Committee?

A. Well, I am Chairman of the Patents Committee. [fol. 143] Q. Well, that's not a——

A. And I am Chairman of the subcommitte on immigration.

Q. That's of the Judiciary Committee?

A. Of the Judiciary Committee. But the Judiciary Committee is my main committee.

Q. Now, Congressman, you I assume are familiar with the Rules of the House?

A. Yes, in a general way.

Q. I call your attention specifically to Rule XI(m) in Government's Exhibit 13.

Now, when did you first learn that I had, on behalf of Mr. Yellin, asked the Committee to hold an executive session for him?

A. My recollection, Mr. Rabinowitz, is very vague. I think it was after the hearing had started. I knew nothing of the telegram; the telegram was not sent to me; and I don't know what member of my staff got hold of it; I never saw it.

Q. Does Mr. Arens have authority to act for the Committee in passing on requests such as the one that is contained in Defendant's Exhibit 1?

A. He has not. The only authority he has is authority [fol. 144] to do the housekeeping of the Committee. He has nothing to do with policy; he has nothing to do with investigations, except insofar as he carries out the instructions of the Chair, who usually acts after consultation with the full Committee at executive sessions.

Q. So that in sending the reply, which is marked in evidence as Defendant's Exhibit 2, Mr. Arens acted in excess of his authority; is that correct?

A. Well, I would like to see the exhibit, and I would like to see what it is in reply to.

Q. Surely. I show you Defendant's Exhibit 1, which is my telegram. It is not a very clear copy. If you have any trouble in reading it, I can give you a better copy. And I also show you Defendant's Exhibit 2 which is Mr. Arens' reply.

Both of these were produced by Mr. Tavenner, pursuant to my request.

A. Well, certainly Mr. Arens did not have any authority to deny a request, but the telegram was not sent to him, it was sent to Mr. Tavenner, who likewise has no authority [fol. 145] to act in matters of this sort. I am sure this could not have happened, had you addressed your telegram to me.

Q. Do you recall my appearance at the hearing at Gary, in the course of which I attempted to raise, at the Committee hearing, the question of putting these telegrams into the record?

A. No, I don't. You say you did; I am willing to accept that.

Q. Well, suppose I show you the beginning of the transcript and ask you to read the first——

The Court: You mean, not aloud?
Mr. Rabinowitz: No.

By Mr. Rabinowitz:

Q. And ask you to read, to yourself, and see whether that refreshes your recollection as to the incident on the opening of that hearing.

A. I still have no independent recollection, Mr. Rabinowitz, but I am sure that that is a correct transcript of what occurred.

Q. Do you recall whether, at the time this occurred, you knew of the existence of the two telegrams?

A. No, I did not.

[fol. 146] Q. Well, were'nt you interested in finding out what I was talking about?

A. I knew what you were talking about. You were talking about a telegram that you say you sent, and it was too late then to raise any question that might have been raised by the telegram.

Q. Why was it too late? Wasn't it possible for the Committee to hear Mr. Yellin in executive session at that time?

A. Well, the Committee already passed on the question of whether or not we would hear Mr. Yellin at a session when the purpose of calling him was discussed, and it was decided then that the rule with respect to an executive session was not applicable because the investigator—and I might say it was Mr. Collins, a former F.B.I. agent, who developed this entire matter, and we were willing to accept his story with respect to the proposed testimony.

Q. And what was his story?

A. Well, his story was that the man was a known Communist; that he had been active in the international con- [fol. 147] spiracy; and that he had deceived his employer; and, furthermore, he came within the category of those people that we were experiencing a great deal of difficulty in finding out about with respect to the colonization.

Q. Did you assume, from Mr. Collins' report, that Mr. Yellin would be a witness who would refuse to give information to the Committee?

A. We had no way of knowing.

Q. Well, what conclusions did you draw from the report of Mr. Collins which you have just related?

A. We concluded that this would be a fine witness for the Committee in support of proposed legislation having to do with colonization, and, two, having to do with the protection of our defense efforts. And it is always worth a chance that somebody will testify.

Q. But it wasn't worth the chance of calling him in executive session, to see what his position would have been?

A. I am sure that had you communicated this whole matter to the Committee before we left Washington so that we could have given it due consideration—we would [fol. 148] have, and always do—we might have a different situation today.

Q. So that at the time I raised at this hearing the question of the telegrams, you didn't know anything about any telegrams, and you weren't sufficiently interested to find out what I was talking about; is that right?

A. Well, not exactly that, Mr. Rabinowitz. I was interested in knowing. I knew that you made an application for an executive session.

Q. How did you know that?

A. Well, the telegram; at least, that's what you started to talk about.

Q. You knew it at the time of the hearing?

A. No. Isn't that what you started to talk about?

Q. When did you first learn that I had made an application for an executive session?

A. I believe today. I never had seen these telegrams, actually. I heard you mention them, at least now my recollection is that I heard you mention them, but I haven't seen them until this minute.

[fol. 149] Q. And when I mentioned them, you, as I said before, were not sufficiently interested to find out what I was talking about?

A. Well, I think that you made it abundantly clear there, didn't you? Doesn't the record show that?

Q. No, I think not. If you will just look at the record again you will see that there is nothing in that record that makes it abundantly clear as to what the contents of those telegrams were.

Didn't you care what I was talking about when I referred to making telegrams a part of the record here, telegrams that I had sent to the Committee? Didn't you want to know what was in them?

A. You didn't send any telegrams to the Committee; you didn't communicate with any member of the Committee.

Q. Well, I sent telegrams to counsel for the Committee, didn't I? Isn't that the way that lawyers normally act with respect to each other?

A. Well, I always had an idea that if you wanted something from a committee, you would correspond with the chairman of the committee.

[fol. 150] Q. And not with counsel for the committee?

A. Not on a matter of this sort, no.

Q. But in any event you weren't sufficiently interested even to ask me what it was that I was talking about when I referred, as I did, at the opening of the session, to the telegrams?

A. The record speaks for itself.

Q. As a matter of fact, it appears here, doesn't it, that you said that you would consider the matter that I had

raised about putting the telegrams into the record in executive session. Do you recall that?

A. Yes.

Q. Did you ever consider it in executive session?

A. Yes.

Q. When?

A. I just can't remember.

Q. Well, didn't you say just three minutes ago——

A. I just can't remember that we had these telegrams. I don't ever remember seeing them until this minute.

Q. Well, did you, or did you not, take it up in executive session as you said you would?

[fol. 151] A. I am not clear; I think that we probably did talk about making it a part of the record, and I think the conclusion was reached that it was not properly a part of the record already made.

Q. Didn't you testify, Congressman, just a few minutes ago, while you were on the stand, that the first you knew about the contents of the telegram was just now, when you got on the witness stand?

A. That's right.

Q. So you discussed this whole matter in executive session after the Gary hearings, without even knowing what the telegrams said?

A. That's about it.

Q. And you reached the conclusion not to make them a part of the record without even knowing what was in them?

A. That's right. Counsel said that these were, as I recall it now—I am very hazy on this.

Q. Is there any minute in the Committee records or in the subcommittee records relating to this subject?

[fol. 152] A. I don't believe there is. I think that the only minute relating to this would be the minute that would indicate what the hearing was about in order to make it possible for us to make the report to the Congress.

Q. Did you know, prior to your appearance here today, that I had requested the production of these telegrams?

A. No, I didn't.

Q. Mr. Tavenner had never discussed with you a telephone conversation that I had with him a few days ago?

A. No.

Q. In any event, did Mr. Tavenner ever check with the

Committee as to whether he had authority to present these telegrams or to bring them into court here?

A. No; Mr. Tavenner came to me when the subpoenas were brought up to the Capitol, and I told him that he should prepare a resolution and I would present it to the House, which I did. The resolution is, I think, an exhibit. And that was as much as we talked about.

[fol. 153] Q. Mr. Tavenner did not at Gary say anything to you about these telegrams?

A. Frankly, I just don't want to be positive about it. I think the impression I got was that these were telegrams that were more or less in the nature of a request to postpone, without grounds, or whatever it was that Mr. Tavenner told me and the other members of the Committee; and I think that we were just not impressed by it.

[fol. 154] By Mr. Rabinowitz:

Q. Let me ask you, Congressman Walter, didn't you direct me to stop talking at that hearing at the time that I started to discuss the telegrams?

A. I informed you that you knew of the rules of the Committee; that we extended the courtesy to people called as witnesses of having counsel advise them as to their constitutional rights; that counsel knew that that was the extent of his right to appear before a congressional committee. And I think that I was entirely justified, because I believe you were trying to prevent us from swearing the witness, as I recall it; I don't remember.

Q. Will you look at the testimony again, which is in front of you?

A. No, it isn't in front of me.

(The exhibit was handed to the witness.)

You see, you didn't even there inform me as to the contents of the telegrams.

Q. Well, I assumed that you had them.

A. Well, how could you assume that when you didn't extend me the courtesy of sending them to me?

[fol. 155] Q. When you say, Congressman Walter, and I quote from the bottom of the page

I said, "May I state——"

And you interrupted and said, "Do not bother. You know the privileges given you by this committee. You have appeared before it often enough. You know as well as anybody."

"Go ahead, Mr. Tavenner."

Weren't you then referring to the fact that it is not the practice of the Committee to hear counsel, and that the function of counsel at Committee hearings is solely to confer with witnesses?

A. Yes.

Q. Now, Congressman Walter, you are or course familiar with that portion of Rule XI of the Rules of the House which defines the jurisdiction of the House Committee on Un-American activities, aren't you?

A. Yes.

Q. I am referring specifically to Rule XI, subdivision 17, in Government's Exhibit 13.

You know, do you not, that this rule provides that the [fol. 156] Committee is authorized to make from time to time investigations of—and I am quoting—"the extent, character, and objects of un-American propaganda activities in the United States".

What, in the opinion of the Committee, is the meaning of the expression "un-American propaganda activities"?

A. That is the question that was raised in the Supreme Court. It seems to me that the answer is quite simple. It is any activity that is inimical to the best interests of the United States.

Q. Do you mean any activity, or any propaganda activity?

A. I mean propaganda activity.

Q. Any propaganda activity?

A. Or activity, either.

Q. Either propaganda activity or any other kind of activity inimical?

A. "Activity" could or would necessarily include propaganda, I take it.

Q. In your opinion, is propaganda which advocates the [fol. 157] abolition of the House Un-American Activities Committee within the scope of the jurisidiction of your Committee?

A. Well, what my opinion is, is my opinion, of course, and not binding on the Committee.

Q. Well, do you know the opinion of the Committee?

A. No. If you want my personal feeling about the matter, I am one of the forty-two men who voted against creating the Committee. I thought that its function should be within the framework of the Judiciary Committee, just as it is in the Senate, where this work is done by a subcommittee of the Judiciary Committee.

Q. Do you still feel that way?

A. Of course.

[fol. 158] By Mr. Rabinowitz:

Q. Is it the opinion of the Committee that propaganda urging the abolition of the Committee is "un-American propaganda" within the meaning of Rule XI?

A. I have never seen Committee action. I know the Committee has never taken any action in this field. I don't remember discussing this with any members of the Committee.

[fol. 159] Q. So, so far as you know, the Committee has never asserted any jurisdiction to investigate this subject?

A. Of course not.

Q. The subject of propaganda advocating the abolition of the Committee?

A. No.

Q. Does the Committee consider propaganda which urges freedom for Morton Sobell to be un-American propaganda?

A. Well, I can't answer that categorically, because the people who have been active in the movement are, for the most part, Communists, and there is always the question of whether or not any of the money that would be raised in this movement would ever reach anybody other than those people who are interested in furthering the Communist conspiracy.

Q. But the propaganda itself the Committee does not consider to be un-American propaganda?

A. No.

Q. What about propaganda urging resistance in the south to the Supreme Court decision in Brown against

[fols. 160-165] The People, do you consider that to be un-American propaganda, or propaganda inimical to the best interests of the United States?

Mr. Keeney: If the Court please, I object to that question. We are getting far afield now.

The Court: I don't quite see the relevancy.

. . . . . .

[fol. 166] The Court: That's the view I am going to take, and I will sustain the objection to the last question.

By Mr. Rabinowitz:

Q. Is it the view of the Committee, Mr. Walter, that any activities at all by the Communist Party come within the jurisdiction of the Committee?

A. Not necessarily. There are many activities that the Communists engage in because they are popular for the moment, and they affix themselves to these movements [fol. 167] in order to get credit for whatever success these movements meet with.

Q. And under those circumstances you would not consider such activities to be within the jurisdiction of the Committee?

A. That is right.

Q. So that when the Communist Party affixes itself to some sort of legitimate form of expression, and I am trying to use your words, for whatever motives it may have, such activities by the Communist Party you would not consider to be within your jurisdiction?

A. If that is the extent of the activity of the Communists.

Q. So that when the Communist Party—and I just use this as an illustration—affixes itself to some sort of legitimate activity such, for example, as the trade union movement, which we would agree is a legitimate activity, this is not within the jurisdiction of the Committee?

A. Unless the Communists engage in labor union activities for the purpose of obtaining positions of authority so that they may direct the activity of the labor movement. [fol. 168] In those instances we feel that this is clearly within the scope of the authority given to the Committee on Un-American Activities.

Q. So you feel that the Committee would have the authority to investigate and therefore the authority to legislate with respect to efforts by the Communist Party to exert influence in leadership positions in the trade union movement?

A. Yes.

Q. Regardless of the purpose for which such leadership was exercised?

A. Well, the purpose is always very apparent. There can be only one purpose, and that is the furtherance of the international conspiracy.

Q. Is not the purpose sometimes to secure higher wages for the workers?

A. No. I have never heard of any Communist engaging in that sort of activity for that purpose.

Q. Congressman Walter, taking the 84th and 85th Congresses, which were the periods of your chairmanship of the Committee, do you know how many bills have been referred to your Committee by the Speaker of the House?

A. No, I don't know. I know that this session, just sev- [fol. 169] eral weeks ago, a bill to give authority to protect confidential records was passed on the unanimous consent calendar. There has been referred to our Committee an omnibus security bill. Frankly, we haven't acted on it because parts of it have been acted on in other committees, and parts of it are pending in other committees. You will find in it many different pieces of legislation over which other committees have jurisdiction.

Q. As a matter of fact, it has pretty generally been the experience of the Committee on Un-American Activities that other committees have jurisdiction over matters that it considers hasn't it?

A. No. Actually, the Committee has one of the finest records in the House for accomplishments. I believe that forty-six laws that ar n the statute books came out of the Committee. That ... recollection.

Q. Congressman Walter, can you name three bills in the history of the Committee, twenty-one years of history, which were reported out by your Committee, and which passed?

A. Well, the Internal Security Act, Amendments to the

[fol. 170] Internal Security Act, the so-called Scherer Bill, the bill——

Q. Pardon me, let's take these one at a time.

You mentioned the Internal Security Act. Are you referring to the 1950 Act?

A. Yes.

Q. You said the Amendment to the Internal Security Act. Are you then referring to the 1954 bill?

A. 1954.

Q. Those two. Those two I knew about. That's why I asked you if you knew of three. Now, what is the third one?

A. Well, the third one is the bill which gives to the Secretary of Defense jurisdiction to promulgate regulations governing access to confidential information.

Q. That's the one which was just passed a few days ago?

A. That's right; several weeks ago.

Q. And that has not yet been enacted into law?

A. No, it hasn't because the Senate isn't doing anything.

Q. Can you name any others, in the twenty-one [fols. 171-172] years

Mr. Keeney: I object to any further interrogation on this, your Honor. It is immaterial.

. . . . . .

[fol. 173] The Court: I think I will overrule the objection.

(Question reread.)

A. Not directly. But you must remember this, that the information that this Committee obtains and the testimony adduced goes to other committees having legislative authority, for example——

Mr. Rabinowitz: We have your answer.

The Court: I am going to let him finish. For example, what?

A. (continuing) For example, the passport situation, the Committee on Foreign Affairs has jurisdiction. The Committee on Un-American Activities developed a great deal of information which was used by the Foreign Affairs Com-

mittee when it prepared legislation to meet the situation that the Committee on Un-American Activities showed needed remedying.

[fol. 174] This is true with respect to some of the immigration bills; they go to the Judiciary Committee, but as the result of the records prepared by our Committee. Our records are given to all of the committees of the House.

By Mr. Rabinowitz:

Q. Didn't the House Foreign Relations Committee or Foreign Affairs Committee hold hearings of its own on the passport bills?

A. Yes, they did hold some hearings.

Q. And didn't the Judiciary Committee hold hearings of its own on the immigration bills?

A. No, we didn't hold hearings. Incidentally, the Committee of the Judiciary also had jurisdiction over passport legislation, and somehow or other it went to Foreign Affairs.

Q. Now, I want to go back to the question I asked you a few moments ago. I don't believe I got an answer.

Do you know how many bills—let me withdraw that and ask you a question—I guess you can qualify, in view of your long service—ask you a question as an expert as to the operation of the House.

[fol. 175] When a bill is introduced by a member, the bill in due course gets to the Speaker's desk, doesn't it?

A. No, it goes to the Parliamentarian. The Parliamentarian then routes it; he decides which committee has jurisdiction. It goes to that committee; then that committee acts; and it then goes to the Speaker for scheduling.

Q. I see. Now, let me ask you this:

Do you know how many bills in the 84th and 85th Congresses were referred by, you say the Parliamentarian, to the House Committee on Un-American Activities?

A. I would say only the Internal Security bills, because it is spelled out. That is our jurisdiction.

Q. Do you know how many?

A. No, I don't know how many.

Q. Well, the Reference Service of the Library of Congress in its digest of public general bills reports that in the First Session of the 84th Congress out of 6,580 bills intro-

duced into the House one was referred to your Committee, that being the bill by Mr. Miller, of Maryland, which was [fol. 176] never reported out.

In the Second Session of the 84th Congress 5,876 bills were introduced into the House, of which none were referred to your Committee.

In the First Session of the 85th Congress, out of 9,599 bills introduced into the House, four were reported to your Committee, not one of which was reported out.

And that in the Second Session of the 85th Congress, out of 3,922 bills, one was referred to your Committee, and that was not reported out.

Is that in accord with your recollection, as Chairman?

A. I think that is correct. That's why the record of the Judiciary Committee looks so large, because these are all private claims bills, claims against the United States, or private immigration bills, for the most part.

Q. Would you mind repeating that answer?

A. I say for the most part these bills are private bills; that's where the number is so large. I am not trying to indicate by that that these records are wrong. The jurisdiction of the Committee on Un-American Activities is [fol. 177] Internal Security law, and amendments to it; that's the field entirely.

Q. Just that?

A. Just that.

Q. These figures that I gave you, incidentally, are public general bills, not private bills, Congressman.

This number of bills that I have just referred to is substantially less than that referred to any other of the legislative committees of the House, isn't it?

A. Frankly, I don't know. I would say yes.

Q. When the Committee determines to conduct an investigation, as it did in this case, and as it has in many other cases in its history, I understand from the procedure followed here, and from Mr. Tavenner's testimony, that the normal policy is for the Committee to meet and to determine that a certain kind of investigation shall be conducted in a certain place or in a certain area. That is right, is it not?

A. Yes.

Q. Is such a determination normally preceded by a staff investigation?

A. Yes, that's right.

[fol. 178] Q. How is such an investigation carried out?

A. Well, the staff, for the most part, are experienced government investigators. There comes to the Committee information of a certain sort, the Committee meets, and then we decide whether or not we are going to make inquiry into a particular field. After that determination is made, the Director of the Committee is then ordered to conduct the investigation. He selects an investigator. Usually before we even move that far, Mr. Tavenner, our counsel, is called into the executive session and we discuss the scope of the inquiry, what course it shall take. And then the investigator proceeds with his inquiry. He comes back to the staff Director, and he then reports at an executive session as to whether or not, in his judgment, we should proceed with the inquiry.

Q. And then are field investigators sent out into the field?

A. They are sent out before the final decision is reached.

Q. And are they under instruction to interview people and to see whether they can find persons who might have [fol. 179] information to give the Committee?

A. Yes.

Q. Is it a matter of policy for the Committee staff to interview all persons prior to issuing a subpoena to them?

A. No, I wouldn't think so. Nobody has ever been given those instructions.

Q. They do interview some they do talk to some potential witnesses, don't they?

A. That's right.

Q. Do you know how they determine which witnesses to interview before issuing subpoenas, and which witnesses to issue subpoenas to without talking to them in advance?

A. No, I do not.

Q. There are no instructions on this matter, I take it?

A. No.

Q. The Committee does sometimes hold executive sessions, doesn't it?

A. Yes.

Q. And what are the considerations which the Com-

mittee uses in determining whether to hold executive ses-
[fol. 180] sions.

A. This is usually done when the Committee is fearful lest a witness will mention the name of somebody against whom there is no sworn testimony, and in order to prevent the name of somebody being mentioned in public that we are not sure has been active in the conspiracy, at least that there isn't sworn testimony to that effect, we have an executive hearing.

Q. Are those the only circumstances under which executive hearings are held?

A. I don't know of any other, except that where we are fearful that testimony might be adduced that could be harmful to the national defense. We are not so sure about the testimony of any of the witnesses.

Q. Doesn't the Committee frequently hold hearings, executive hearings, for the purpose of screening witnesses, to determine whether they are going to answer or not answer questions?

A. The Committee as such doesn't; the staff occassionally does.

Q. Well, you mean the staff holds hearings?

A. The staff would call in a witness and interrogate him
[fol. 181] preliminarily with an investigator, in order to determine whether or not the matter should be referred to the full Committee.

Q. You were here this afternoon, I believe, when Mr. Tavenner was being examined. You may recall that I told him that our computation had indicated that upwards of eighty per cent of the witnesses called by the Committee were persons who refused to give answers to questions.

Is that generally in accord with your experience?

A. I am willing to accept your figures, Mr. Rabinowitz. I will say this, that a great many do not testify, usually those accompanied by counsel, but occasionally we are very pleasantly surprised by having somebody give us information that is of great value in the drafting of legislation.

Q. Would you say that generally when a witness appears accompanied by counsel, the chances are he is going to be, if I may be colloquial, a hostile witness?

A. It depends upon who counsel is.

Q. You mean you can tell by who the counsel is whether he
[fol. 182] is likely to answer questions?

A. We have got a pretty good idea.

Q. So that when certain attorneys appear representing witnesses, you pretty generally come to the conclusion that this fellow isn't going to give you very much information?

A. You are calling for a mental operation. I don't know as I have ever thought about it.

Q. Well, that's just what you said a minute ago, isn't it?

A. Yes.

Q. Now, have you ever, when a witness appeared at a hearing represented by one of these lawyers that you have just referred to, decided to dismiss the witness because you knew he was't going to give you any information of importance, anyhow; since he was represented by one of this group of counsel?

A. No; I would be afraid that would present too strong a temptation to everybody to retain certain lawyers.

Q. Well, if you know that a witness is not going to answer questions, why do you call him?

[fol. 183] A. We don't know until the questions are propounded.

Q. But in over eighty per cent of the cases, it develops that they don't answer questions.

A. Yes, but in twenty per cent they do; and you must bear in mind that we are dealing with the kind of people that can give us a great deal of information, if they desire to, and the fact that twenty per cent talk indicates that we are getting a lot of information that has been helpful in the drafting of important legislation.

Q. I don't want to mislead you, Mr. Walter, but I think it only fair to advise you that twenty per cent includes many people like Mr. Collins, Mr. Appell, and other members of the Committee staff who for one special reason or another are called, so that actually —

A. Well, but let's not misstate the facts. Those investigators are never called as witnesses, so Mr. Collins and Mr. Appell only rarely have ever testified.

Q. Well, rarely, but they are included in the twenty per cent. In any event, when you, as Chairman of the Com-[fol. 184] mittee, have a witness called even though you may know, because of his lawyer, for example, that he is not likely to answer questions, you proceed to call him, anyhow, because you don't want to indirectly encourage potential witness to hire certain lawyers; is that your testimony?

A. No, no; that isn't my testimony at all. These people are interrogated with the hope that they will testify, as many of them have, of course.

Q. So even when they are represented by this group of lawyers that you have referred to, you still have a hope that they will answer questions?

A. Yes, sir.

Q. Has that hope ever been realized?

A. I think it has.

Q. Do you know of any case?

A. I don't remember, offhand. There are so many cases: I just don't remember.

Q. You have been at many hearings of other committees, such as the Judiciary Committee and other committees on which you have served, haven't you?

A. The Judiciary Committee, yes.

Q. Does that committee have experience anything like [fol. 185] this with respect to calling large numbers of witnesses who don't answer questions?

Mr. Keeney: I object, of the Court please; it is immaterial.

The Court: I don't see how that would help decide this case. I will sustain.

By Mr. Rabinowitz:

Q. The Committee from time to time issues annual reports, doesn't it?

A. Yes.

Q. And does it also, from time to time, issue other reports, bulletins, and publications of various kinds?

A. Yes, that's correct.

Q. Mr. Walter, the Committee from time to time comes to the Congress and asks for special authorization to print a large number of one or another of its reports, doesn't it?

A. That's correct.

Q. For example, my records here indicate that on January 21st, of this year, you introduced a House Concurrent Reso- [fol. 186] lution which bears No. 449 to print as a House document a publication of the Committee entitled "Facts on Communism, Volume One, the Communist Ideology," do you recall that?

A. Yes.

Q. According to the Congressional Record, you asked for

authorization to print 30,000 additional copies of that document; do you recall that?

A. Yes, that's correct.

Q. That means in addition to what?

A. That means in addition to the 10,000 original copies.

Q. So that would make 40,000 altogether of this document?

A. Yes.

Q. Now, my notes also indicate that you introduced a resolution which is entitled House Resolution 414, which I am not sure has been passed yet, at least it hadn't been as of Feburary 11th, for the printing of additional copies of Parts 1, 2, 3, and 4 of staff consultations entitled "The Crimes of Khrushchev." Do you recall that?

A. Yes.

[fol. 187] Q. Do you know how many additional copies you asked for?

A. No, I don't, but I think the number will, by agreement, be reduced, because we feel that people ought to pay for them, pay the Government Printing Office.

Q. Be reduced from what to what?

A. Well, from 10,000 to I think 8,000.

Q. As a matter of fact, from time to time the Committee has requested leave for the printing of very substantial numbers of additional copies of reports, hasn't it?

A. Yes.

Q. I believe once it requested 250,000 copies of a document entitled "One Hundred Facts You Should Know About Communism," or something like that. Do you recall that?

A. Yes.

Q. What is the legislative purpose of such large printing authorizations?

A. The legislative purpose is to make the people aware of the conspiracy, with the hope that they will furnish us with the kind of information that is necessary in the event [fol. 188] that legislation must be drafted. However, some of these documents are published because, under the authority of our Committee to expose Communist propaganda, we feel that the witnesses have testified to things that are of great value, and so that the people can be aware of the danger. And, incidentally, it is significant that not

only the appropriation of $327,000 for the Committee was approved by unanimous consent, but each one of the resolutions you refer to has been on the consent calendar and has been approved without one single dissenting vote in the House.

. . . . . .

[fols. 189-190] Mr. Keeney: I object to any further interrogation with respect to publications.

. . . . . .

[fol. 191] By Mr. Rabinowitz:

Q. Mr. Walter, I would like to show you these two volumes. One of them is called "Cumulative Index to Publications of the Committee on Un-American Activities [fol. 192] 1938 to 1954," and consists of some 1,344 pages; and another one which is called "Supplement to Cumulative Index to Publications of the Committee on Un-American Activities 1955 and 1956".

Mr. Keeney: If the Court please, I object to going into the first document that is referred to there.

. . . . . .

[fol. 193] By Mr. Rabinowitz:

Q. You are familiar with these documents, are you not?

A. Yes.

Q. They are both publications of the House Un-American Activities Committee?

A. That's right.

Q. Now, I ask you to examine them, and ask you if it is not a fact that despite the title, which says that it is an Index to Publications, actually only the first, oh, dozen or so pages constitute an index to publications, and the rest of it consists of a list of names of people and organizations.

Is that right?

A. Yes, that's correct.

Q. What was the legislative purpose in ordering that document?

A. Well, of course, in addition to the names of persons and organizations, there were publications, and this was [fol. 194] done because of a widespread demand for a list of publications and information that our staff couldn't keep up with, so we put together this index, and its circulation was quite limited, in order to make it possible for people who were seeking information constantly to have it before them. For example, we have a library which is used by the Civil Service Commission, the F.B.I., Naval Intelligence, Military Intelligence, and as a matter of fact, these four agencies of the Government have people stationed there constantly. This was the first attempt to put together in document form the contents of that library.

Q. Is that what this is? Is this a book which tells the contents of that library?

Just look at it.

A. I know what's in it. It contains more than that. It contains the names of people who testified, and a reference to the volume in which the testimony appears. That's because members of Congress every day in the week, and other people, make inquiries about individuals.

Q. As a matter of fact, Mr. Waiter, it is more than that, [fols. 195-198] isn't it? It isn't only a list of people who testified, and the page on which they testified; it is a list of everybody whose name has at any time been mentioned at a House committee hearing.

A. No, it doesn't go quite that far; it contains the names of the people who have been identified as participating in some Communist movement or other.

Q. I see. So that when we have on page 84 of this, a reference to Hugo Black with about twenty or thirty references after it, those are cases in which Mr. Justice Black has been referred to as having participated in Communist activities; is that right?

Mr. Keeney: I object, if the Court please.

. . . . . .

[fol. 199] The Court: Well, in any event, I think I have ruled on this specific question and sustained the objection.

By Mr. Rabinowitz:

Q. Now, Mr. Walter, will you examine those two documents, and tell us what that list of names there represents?

Mr. Keeney: The same objection, your Honor.

The Court: Well, I think he already answered that.

Mr. Rabinowitz: He answered it obviously incorrectly; it is patently an incorrect answer, to indicate that this is a list of people who have been identified with Communist activity, as anybody can tell by glancing at that document; and I think the witness ought to be given an opportunity to correct what is clearly an erroneous answer on the face of the [fol. 200] document.

The Court: If the Congressman——

Mr. Rabinowitz: If he wants to persist in his answer, I will take it.

The Court: If he wishes to correct it, he may.

A. What I was trying to say was this: During the course of the hearings a great deal of information comes that is not entirely within the scope of the purpose of the hearings. Documents are mentioned, people are mentioned, organizations are mentioned; they all appear in the transcript of the hearing. So that in order to avoid any mistakes, so that the wrong impression isn't gathered about the mentioning of a person who perhaps was in no wise implicated in any activity, we have taken those names and listed them here, and the files so show, the files of these people show precisely the activity that they were engaged in. Now, otherwise, the names would appear in a bare record, without any explanation, so the purpose of this is so that you can turn to the files and get a report on any of those people, and the report [fol. 201] will be that these people had nothing to do with Communist activities, but that their name appeared in the testimony of somebody with respect to something under inquiry.

Q. Is that true of everybody there, that all of those people are people who had nothing to do with Communist activity? Before I thought you said——

A. No, it is both.

Q. Now, if is really what I said a moment ago, and what you denied, namely, it is the list of the names of every

person who has been mentioned in any of the published transcripts of House Committee hearings; isn't it?

A. Yes, that's it, exactly. That isn't what you said. That is it, exactly.

Mr. Rabinowitz: The record will show what I said.

The Witness: Well, all right, sir.

By Mr. Rabinowitz:

Q. Now, will you explain the legislative purpose of the publication of these?

A. Well, the legislative——

Mr. Keeney: Objection, that it is immaterial, your Honor.

[fol. 202] The Court: Well, I think I am going to overrule the objection.

You may answer.

A. The legislative purpose does not appear in these volumes, but there was a legislative purpose when the names that appear were mentioned.

By Mr. Rabinowitz:

Q. But the publication of these volumes serves no legislative purpose?

A. That's right.

Q. The Committee has on occasion published other extensive lists of names, hasn't it? For example, it once published a list of the names of everybody in the United States who had ever signed a Communist Party nominating petition; do you remember that?

A. I don't recall.

Q. You have no recollection of any such Committee document?

A. No. It may well be, Mr. Rabinowitz, but I don't remember that there ever was such a publication.

[fol. 203] Q. Does the Committee have in preparation now a new supplement to this index? This goes only up to 1956. May we expect another supplement soon?

A. I don't know. I think it is in typewritten form now, for reference. I think there is a card index from that date on up to the present; I think we try to keep it current.

Q. As a matter of fact, you have rather an extensive card index, don't you?

A. Yes, but you will find that the names in that volume are the names in the file index.

Q. You mean there are no names——

A. I don't think so.

Q. Well now, let me refer again to this, because I am now misunderstanding you, Congressman——

A. From the last date on, I am sure there are cards.

Q. But you have, in addition to this, a rather large extensive card index which you call in your reports "a reference library"?

A. That's right.

Q. And that reference library contains cards for indi-
[fol. 204] viduals; is that right?

. . . . . .

[fol. 205] A. Yes.

By Mr. Rabinowitz:

Q. Do you have any idea as to how many such cards there are?

A. No, I haven't.

Q. Who has access to this reference service?

A. Nobody but the members of Congress and the staff of the Committee. Agencies of the government have access to it through permission given by members of the Committee.

. . . . . .

By Mr. Rabinowitz:

Q. You said that access to this reference service by members of the executive branch of the government is limited to those cases in which they make application to the staff of the Committee?

A. That's right.

Q. Are such applications frequently made, do you know?
[fol. 206] A. Yes; I am informed that the F.B.I. in their job work has somebody stationed at the Committee most

of the time. That's for investigations for federal employment.

Q. I assume that this card file that you have described is a file which contains the names of persons and information that the Committee has collected about them; is that right?

A. That's correct.

Q. What is the legislative purpose of such a file, even for members of Congress?

A. The purpose——

Mr. Keeney: Objection, as immaterial, if the Court please.

The Court: I think I will overrule.

A. The purpose is to prevent people from being harmed whose names might have been mentioned, and when an inquiry is made concerning the name of somebody that cropped up in a hearing there is the evidence showing exactly the connection.

By Mr. Rabinowitz:

Q. You mean this cardfile of some undetermined number of people is maintained just to protect people from being harmed?

[fols. 207-208] A. For two purposes: One, to set forth the activities of people that have been engaged in Communist activities; and, two, to tell the real reason why names of other people have been mentioned.

. . . . . .

[fol. 209] OFFERS IN EVIDENCE

Mr. Rabinowitz: Your Honor, at the close of the session yesterday I had asked leave to have marked as the defendant's exhibits next in order two documents concerning which the last witness had been questioned, one of them being a document entitled "Cumulative Index to Publications of the Committee on Un-American Activities 1938 to 1954," prepared and released by the Committee on Un-American Activities, and the second a Supplement to the Cumulative Index for the 84th Congress bearing dates 1955 and 1956, released evidently in December, 1958. You will recall that I had requested leave to mark

these exhibits and then withdraw them because I have need for them.

[fol. 210] I would therefore like to have them marked as the next two exhibits in evidence.

(Said instruments were marked Defendant's Exhibits 6 and 7, respectively, for identification.)

The Court: You are offering them in evidence?

Mr. Rabinowitz: Yes, sir.

The Court: Any objection?

Mr. Keeney: If the Court please, I am going to object on the same grounds that I objected previously with respect to the testimony.

* * * * * * *

The Court: Well, I don't know how material it is, but I am going to overrule the objection. Admitted.

[fol. 211] (And thereupon Defendant's Exhibits 6 and 7 were admitted in evidence.)

STATEMENT BY MR. RABINOWITZ

Mr. Rabinowitz: Your Honor, I have one more witness. Before calling him, I would like to make just a brief statement.

The defendant here will urge before this Court, and, if necessary, before any appellate courts, that the First Amendment to the Constitution bars the type of questioning that the defendant was subjected to by the Committee, and that the Committee has no authority, under the terms of the First Amendment, to ask such questions. We will urge, on every opportunity that we get, the argument that was the argument of the dissent in the Barenblatt case. I am aware of the fact that it is a dissent, and we will have to find some court that will accept that, but I would like to make it clear here that we are reserving that argument and do not intend to waive it. However, I am realistic enough to recognize that the majority in the Barenblatt case, a narrow majority, but still a majority, took a different view of the First Amendment, then spoke in terms of balancing rights.

[fols. 212-215] Because I believe we are entitled to an

acquittal here, whether it be on the basis of the views of the dissent, or the views of the majority, I would like, through the next witness, to address myself to the question of the balance.

I propose to call, as my next witness, a witness who will present expert opinion testimony on the subject of balancing. He is Professor Thomas Emerson, Professor of Law at Yale University, and I, of course, am prepared to present to you, through him, his qualifications to act as an expert in that area. I will then address to him a few questions concerning his opinion with respect to the interests that have to be balanced and the various considerations that must be taken into account in determining this question.

Professor Emerson.

THOMAS I. EMERSON, a witness on behalf of the defendant, having first been duly sworn, testified as follows:

[fol. 216] Direct Examination.

By Mr. Rabinowitz:

Q. Professor Emerson, what is your occupation?

[fol. 217] A. I am a professor of law at Yale Law School, Yale University.

Q. How long have you held that position?

A. Since 1946.

Q. What is the extent of your formal education?

A. I graduated from Yale College in 1928, and from Yale Law School in 1931.

Q. Are you a member of the bar?

A. I am a member of the bar of the state of New York, and also of the United States Supreme Court.

Q. Will you state for the Court your employment experience prior to your appointment to the Yale faculty?

A. When I first left law school in 1931, I was employed by the New York firm of Englehard, Pollak, Pitcher and Stern. I worked for Walter H. Pollak in that firm. He was well known as an attorney handling civil liberties prob-

lems, and I did some work with him on civil liberties problems at that time. As a matter of fact, the first case I worked on after getting out of law school was the Scottsboro case, which was well known in the '30's as a civil [fol. 218] liberties case.

After two years in New York, I went to Washington, and had positions in the federal government for thirteen years, until 1946, when I went to Yale.

My first position was as assistant counsel in the National Recovery Administration. I was assigned as counsel for one of the four divisions of the legal division. Our division gave legal counsel and advice with respect to those N.R.A. codes which related to the textile industry, the garment industry, the distribution trades, and finance.

After about a year with the N.R.A., I transferred to the first National Labor Relations Board. This was in August, of 1932, and I ——

Q. Excuse me; you said August, 1932.

A. 1934, pardon me. I was on the legal staff of the first National Labor Relations Board, and then the successor Board, which is now the present National Labor Relations Board, until the middle of 1936.

I then transferred to the Social Security Board, where [fol. 219] my title was Principal Attorney, and I was in charge of the legislative amendments and matters of drafting new legislation for the Social Security Board. I was at that board for a year.

In the middle of 1937 I transferred back to the National Labor Relations Board. I became Assistant General Counsel and later Associate General Counsel of the National Labor Relations Board. My function was as head of the review division of the Board, which assisted the members of the Board in the preparation of their decisions.

In December, of 1940, I resigned from the National Labor Relations Board, and shortly thereafter I became Special Assistant to the Attorney General in the Department of Justice. I was assigned to what was then the Assistant Solicitor General's office, and remained there for approximately six months.

In June or July, of 1941, I became Assistant General Counsel of the Office of Price Administration. I remained —pardon me, I became Associate General Counsel of the

Office of Price Administration. I remained in that position [fol. 220] for a year, or approximately more, and then my title was changed to—it was actually a new position—Deputy Administrator, in charge of enforcement for the Office of Price Administration.

In August, of 1944, I became General Counsel of the Office of Economic Stabilization. I remained in that position for a year.

I then moved up to become General Counsel of War Mobilization and Reconversion in August, of 1945.

I resigned from the government to accept the appointment at Yale in 1946, and actually began work at Yale in September, of 1946.

Q. Now, in your almost fourteen years at Yale, what has been the major field of your teaching work?

A. My major field of research and teaching has been the public law field. I have taught courses in constitutional law, administrative law, legislative process, and similar areas in the public field.

Within that general area of public law, I have con- [fol. 221] centrated on political and civil rights. I have done most of my research and writing in the field of political and civil rights, and I have taught a course in that field since the fall of 1947.

Q. Have you done any writing in that field which has been published?

A. Yes: I am co-author with Professor David Haber, now of Rutgers University Law School, of a book entitled Political and Civil Rights in the United States. This is a book of cases, other materials, comments, and references dealing with the subject of political and civil rights in the United States. It was first published in 1952, and a second edition was published in two volumes in 1958.

I have also written a number of articles for legal periodicals in the field, as well as book reviews and popular articles.

Q. Do you keep a continuing file on the subject of political and civil rights?

A. Yes. Since my coming to Yale I have maintained a rather extensive file of clippings, articles from periodicals, [fol. 222] reports, pamphlets, briefs, books, and so forth.

I use this file rather extensively in my research and teaching in the field, and I keep it up to date.

Q. Have you done any work abroad in connection with your study of political and civil rights?

A. Yes, in 1953 to 1954, during that academic year, I was awarded a Guggenheim fellowship for the purpose of studying civil liberties in Great Britain. I went to London, where I was visiting professor at the London School of Economics for that academic year. I taught a course there in American constitutional law, and participated in a course on administrative law, but most of the time I was engaged in the study of civil rights in Great Britain, particularly related to the loyalty security program of the government, and the various methods by which the government, labor unions, political parties, and others, dealt with the Communist problem.

Q. While you were in England, did you do any public speaking on this subject?

A. Yes; I gave a public lecture at the University of London on the subject of legislative investigating com- [fol. 223] mittees. And I also made an address over the British Broadcasting Company network on the same subject.

Q. Have you received any other fellowships?

A. Recently I received a fellowship from the Ford Foundation for the next academic year. This fellowship is for the purpose of studying the legal foundations of the right of political expression.

Q. Can you describe, briefly, the nature of work you do at Yale, with specific reference to the contacts you have, outside the formal teaching contact with students, and other faculty members at Yale, if they exist elsewhere?

A. Well, in addition to the classwork, the political and civil rights course requires that each of the students taking the course must prepare a paper dealing with some subject of civil liberties. In other courses, also, papers are required. And I work rather closely with students in the supervision of these writing projects.

There are other faculty members, of course, on the Yale faculty, who are interested in the same fields, and we constantly discuss these problems.

[fol. 224] I also lecture, have given lectures both at Yale and the New Haven community, and at other places, on various aspects of civil liberties.

Q. Have those other places included other academic communities?

A. Yes; I have lectured at Harvard, Princeton, Columbia, Bard College, Sarah Lawrence, and various other institutions. Those lectures, I should say, were not always sponsored by the college itself, but some of them were sponsored by student groups or other organizations within the college.

Q. In the course of your work in this field, have you familiarized yourself with the activities of the House Committee on Un American Activities and with its techniques and investigations?

A. Yes, I have concerned myself a good deal with the Committee on Un-American Activities.

Q. I feel that this question is anticlimatic, but I assume you are familiar with the decision in the Barenblatt case?

A. Yes, I am.

Q. I would like specifically to call your attention to that [fols. 225-226] portion of the Barenblatt case which appears at page 16 of the pamphlet opinion and discusses what the court calls the issue of a balancing by the court of competing private and public interests at stake in the particular circumstances shown.

Now, Professor Emerson—before I do that, let me ask you, have you read the indictment in this case?

A. Yes, I have.

Q. And have you read the testimony taken at Gary in connection with this hearing?

A. Yes.

. . . . . .

[fol. 227] By Mr. Rabinowitz:

Q. Have you an opinion as to the various considerations [fols. 228-241] which have to be taken into account in balancing the competing public and private interests at stake in the circumstances here presented?

Mr. Keeney: Objection.

. . . . . .

[fol. 242] COLLOQUY BETWEEN COURT AND COUNSEL RE OFFER OF PROOF

The Court: I can't see how this is anything but an [fol. 243] involved legal opinion. Private interests in the field of the First Amendment are self-evident, I assume.

Mr. Rabinowitz: Well, the weight to be given to them.

The Court: And the public interest, certainly, insofar as this area of inquiry that the Committee is charged with making, is set out in Barenblatt; and Congress has voiced it. As the case says, "Justification for its exercise in turn rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress."

Mr. Rabinowitz: Well, your Honor, it so happens that I had not intended to address myself to that widely held view that the court mentioned; that was not to be the subject of the witness's testimony. But since your Honor mentions it, [fol. 244] it seems to me that, had I so desired, I certainly could have presented evidence on that, also, because the fact that there is a widely accepted view is not necessarily an accurate view. But, as I say, I mention that only parenthetically because I had not intended to address myself to that question, nor does the witness intend to address himself to that question.

May I make a practical suggestion, your Honor? If the objection is sustained here, then I would ask leave to make an offer of proof, in any event, because I think that this matter ought to be in the record in the event an appellate court should have to review it. As an alternative to an offer of proof it is always possible, certainly in a case that is being tried without a jury, to have the testimony taken, subject to a motion to strike, or subject to whatever considerations or weight the Court wishes to place on it. Now I suspect that, since I would want to make an offer of proof [fol. 245] in any event, the quickest way to do it would be to permit the witness to go ahead and testify, and if counsel's fears that he is going to give a legal dissertation prove to be justified, then the testimony can either be stricken or disregarded by the Court. In any event I do not anticipate that the testimony is going to be very long and we will need

it, as I say, for appeal, should there be one, in any event. Perhaps the matter can be resolved in that way and with a maximum saving of time and trouble, and then your Honor can examine the testimony before having to make a ruling on it.

The Court: Well, first, I am going to sustain the objection, but as to the question of how the offer is made, I have on occasion, instead of a formal offer, permitted the offer to take the form of questions and answers.

Is there any objection to that?

Mr. Keeney: If the Court please, with the objection sustained, and the offer taking the form of a statement by [fol. 246] Mr. Emerson, rather than an offer of proof by Mr. Rabinowitz, we have no objection. And then you would rule——

The Court: I am sustaining, subject, of course, to a reconsideration, if there is any motion to that effect.

Mr. Keeney: Your Honor, it is understood, then, that I will not have to object to questions that are irrelevant? This is an offer of proof?

The Court: This will constitute an offer of proof.

Mr. Rabinowitz: Your Honor, I am not sure I have to protect my record in this regard, but just to be safe, may I reformulate the question, just so that I have an alternative form of the question on the record, and if your Honor feels that the ruling should be the same you can so indicate, and then we will go ahead with the answer, as has just been suggested.

The Court: You may.

Mr. Rabinowitz: I would like to reformulate the question in this way:

[fol. 247] By Mr. Rabinowitz:

Q. Have you an opinion as to the various factual considerations which have to be taken into account in balancing the competing public and private interests at stake in the circumstances here presented?

[fol. 248] The Court: You may answer that question without stating what it is.

A. Yes.

By Mr. Rabinowitz:

Q. What is that opinion?

Mr. Keeney: Objection, your Honor.

OBJECTION TO TESTIMONY SUSTAINED

The Court: Sustained. for the reasons stated.

Mr. Rabinowitz: Now I understand that the witness may answer.

The Court: This will constitute an offer of proof.

Mr. Rabinowitz: An offer of proof.

A. I will address myself first to the question of the Government's interest in obtaining answers to questions as an aid in framing legislation to protect internal security.

It is important, I think, at the outset to define rather [fol. 249] carefully what that interest of the Government is. It is an interest in seeking information with respect to legislation that will protect against overthrow of the Government by force and violence. The Government does not have a legitimate interest in legislation directed against unpopular ideas or unorthodox beliefs or activities designed to change institutions by peaceful and democratic methods. Hence the Government's interest is one in laws such as those dealing with treason, sabotage, espionage, or various forms of the use of force or violence. And it also, of course, has an interest in legislation designed to deal with preparation or attempts for such conduct, but not with the suppression of legitimate political activities.

Now, as to the considerations which, in my opinion, bear upon the weight to be given this interest of the Government, I first call attention to the laws already on the books and existing at the time of the hearing in 1958 dealing with matters of internal security. There were at that time laws pertaining to treason, insurrection and rebellion, seditious conspiracy, espionage, and sabotage. [fol. 250] There was also the Smith Act, which prohibited advocacy of overthrow of the Government by force and violence, or the forming of organizations to do that.

A very important piece of legislation on the books at this time was the Internal Security Act. In Section 4 (a) of the Internal Security Act it is an offense to agree to do

any act which substantially contributes to the establishment of a totalitarian dictatorship in the United States.

The Internal Security Act also includes provisions for registration of Communist action and Communist front organizations.

And a third major portion of the Internal Security Act provides detention camps for use in the event of emergency to incarcerate people whom the Attorney General has reason to believe may engage in espionage or sabotage.

There is also the Communist Control Act which, in Section 4, denies to the Communist Party the rights, privileges, and immunities attendant upon legal entities, and, in Section 5 makes it unlawful for a person to be a member [fol. 251] of the Communist Party, knowing the objectives thereof.

The Communist Control Act also contained provisions which deal with the question of labor. It amended the registration provisions of the Internal Security Act to include a provision that organizations which were infiltrated by members of the Communist Party would be denied certain rights under the National Labor Relations Act.

In addition to this legislation, there is a mass of legislation and administrative regulation dealing with the problem of loyalty security. Those loyalty security programs cover not only all employees in the federal government, but also all employees in industry who have access to classified materials.

There are a number of additional programs, including that covering dealing with port security, covering maritime workers, and programs such as that in the Aid to Education Act, which requires a loyalty oath from students accepting scholarship aid furnished by the federal government.

[fol. 252] Likewise, among the statutes that have to be taken into account here is the Taft-Hartley Act. As the Taft-Hartley Act existed in 1958, it contained a provision requiring all officers of labor organizations to file a non-Communist affidavit if the organization was to obtain the benefits of the National Labor Relations Act. That has since been amended, but I take it that the amendment is not relevant. The amendment makes it unlawful for a union with officers who have been Communists for the past

five years to obtain the benefits of the National Labor Relations Act.

There are other statutes, including those relating to aliens, and there are, of course, a mass of state and local statutes dealing with this issue.

Thus the interest of the Government in obtaining answers to these questions must be weighed in and related to this large mass of legislation dealing with these problems already in existence.

Secondly, any consideration of the Government's interest [fol. 253] in obtaining an answer to these questions, in my opinion, must also consider the economic, political, and social conditions in the country at the time, so far as they pertain to the issue of whether there was any danger or threat to internal security. This, in my judgment, would have to take into account that from an economic point of view the country was in a period of almost unparalleled prosperity, that production was high, employment was high, and wages and income were all at peak levels. The standard of living in the country during that period was also at an unusually high level. Certainly there was no indication on the part of the Government or of experts that there was any likelihood of economic collapse or depression, and there were many measures designed to avoid such an economic condition.

With respect to political factors, the situation is, or was at that time, and still is, that there is no significant political opposition to the major parties in this country. There are no radical political movements of consequence, with any large membership or support. As a matter of fact, there [fol. 254] are relatively few even protest groups at the present time. There is little support for radical ideology of either a Socialist or Communist nature. In other words, the conditions which would be required for any possibility of danger to internal security were not present politically. It would politically be most unlikely that there would be any danger to national security unless the police force, federal, state, and local, were shown to be infiltrated, or in sympathy with, or at least indifferent to, a radical movement proposing the use of force and violence. In addition, it would require that the military be in support, or at least neutral, and it could only constitute a threat to

internal security if there were widespread public opposition to the Government, considerable bitterness, hopelessness, a feeling or conviction that existing institutions were inadequate to deal with the problems the country faced. None of those conditions existed. As matter of fact, the strength of American political institutions was I think, recognized by all. It had been demonstrated in two [fol. 255] wars and a devastating depression, and continued amid considerable unrest in other countries. Those political institutions had proven themselves flexible to deal with the wars and depression, and the general feeling certainly was that they were flexible and adequate to deal with problems then existing.

So far as social conditions were concerned pertaining to internal security, there was no serious social unrest of any kind in the country. On the contrary, there was general acceptance of the social system; certainly no inclination on the part of anyone to use force or violence to solve social problems.

The only possible areas of disaffection that one might point out would be the farmers, who were suffering somewhat economically. That, however, would not seem to be a serious problem. Farmers are notoriously conservative and certainly not of a mind to use methods of force and violence for overthrow of the Government. Farmers have used force and violence on occasion, but that has been [fol. 256] local in effect. It is unlikely that any general threat would arise from that course.

Negroes in the south might be considered another source of social disaffection, but they have given every indication of solving their problems through legal methods, as well as through peaceful methods, or passive methods.

Certain white groups in the south might also be considered disaffected, perhaps. They have resorted to force and violence on occasion, but that has been of a local nature, not one which seriously threatened the national security.

Thirdly, one must take into account, in appraising the Government's interest here, the strength of the Communist Party, the organization and movement against which the legislation was presumably directed.

In 1958 the Communist Party membership was at the lowest ebb in many years. According to the F.B.I. figures,

it had been in 1952 31,000, and in 1956 it had dropped to 20,000. The F.B.I. does not appear to have issued figures after 1956, but it is clear that by 1958, when the Communist party had felt the repercussions of both the revelations [fol. 257] with regard to Stalin and the Hungarian revolution, that its membership was considerably below 20,000. In 1958 it was undoubtedly less than 10,000, perhaps 5,000.

In terms of political strength, the Communist Party had not been on the ballot since 1940, at which time it obtained 49,102 votes throughout the country. No member of the Senate, no member of the House of Representatives, no member of any state legislature, no mayor, or member of a city council, so far as I am aware, was a member of the Communist Party.

With respect to positions of influence in the country, I take it that it would be accepted by everyone that the Communist influence was not felt in the federal judiciary or in the state judiciary.

With respect to the federal executive branch of the government, the Hatch Act had since 1939 prohibited Government employees from being members of organizations which advocated overthrow of the Government by force [fol. 258] and violence, and which had been interpreted to apply to the Communist Party by the Civil Service Commission. In addition, an elaborate series of executive orders, including the one issued by President Truman in March, of 1947, and the one issued by President Eisenhower in April, of 1953, established broad programs for checking the loyalty of Government employees. And President Eisenhower and Attorney General Brownell, as far back as December, 1953, had stated that there were no further Communists in the federal government.

There were three investigations by congressional committees in 1955 with respect to this question, and the evidence there all disclosed no members of the Communist Party or Communist influence in Government service.

State and local governments were subject to loyalty programs of a similar although not always perhaps as intensive a nature, and there is no evidence that any Communist influence existed in state or local government.

In industry, I know of no evidence that there was,

[fol. 259] Communist penetration of any significance. The same is true of agriculture.

With respect to labor, there is evidence that there was Communist influence in some unions in the period after the war, but that now appears to be very small. The Taft-Hartley Act, passed in 1947, required that all union officers file a non-Communist affidavit, and most all of the union officers did that. In addition, there was action by the unions themselves. Three of the unions that were claimed to be subject to the left wing influence changed their leadership, and ten others were expelled by the C.I.O. in 1949 and 1950. The C.I.O. also set up rival unions to take over the organization of employees in thoses areas. By 1951 Mr. J. Edgar Hoover, chief of the F.B.I., complimented the labor movement upon the excellent job it had done in cleaning out Communist influence.

The situation today I would say is that those unions remaining which have anything which can be claimed to be [fol. 260] left wing leadership include less than one per cent—in unions generally. I would say also that the influence is in the leadership, not in the rank and file, and in any event those unions have confined themselves to union matters, and not to political matters. There is no evidence, that I know of, of substantial Communist influence in the steel union. Generally speaking, the labor movement has been a relatively conservative force in American society today.

Other areas in which it has been claimed that Communists exercise positions of influence are the communications industries, but I think that claim is no longer made and was not made by 1958. In any event, there was no evidence, even if there were isolated Communists in the communications industries, that they influenced the product.

With respect to religious institutions, there have been some assertions recently that Communist influence was of some significance there, but I think that, despite the position of the Committee on Un-American Activities on [fol. 261] that issue, most students of the problem would say that there is no significant Communist influence in religion or religious institutions.

With respect to educational institutions, my judgement would be that Communist influence is about zero at the

present time. Virtually all universities have announced the policy that they will not permit members of the Communist Party on their faculties. The secondary and elementary school systems are in almost all states governed by loyalty programs for teachers which exclude Communists and go beyond that. The various educational associations, including the National Education Association, have, with the exception of the American Association of University Professors, taken the position that the Communists should not be allowed to teach. A recent study by Iversen of Communist influence in education supports this view.

Finally, with respect to negroes, the negro community, the House Committee on Un-American Activities has itself stated that there is no substantial evidence of Communist [fol. 262] infiltration or influence there, and this is supported by studies published in 1951 by Professor Wilson Record and Professor William Nolan of Communist influence in the negro community.

In addition, with respect to the strength of the Communist Party, the F.B.I. has consistently stated that it maintains surveillance over members of the Communist Party and follows their activities.

There have been statements that although the Communist Party membership may be low there are a number of fellow travelers for each hard core Communist and that this may present a problem. There is certainly no evidence as to the number of persons who might be included in that indefinite category of fellow travelers, but even if there were, it is quite clear that persons in such position are not ready in any sense to deal in matters of force and violence. Whatever support they may give to positions which the Communist Party also supports is entirely within the democratic framework.

[fol. 263] Now, fourthly, as to the Government's interest, in my judgement there must also be considered, in weighing the interest of the Government in obtaining information for further legislation, the factor of the control of Communist influence in the labor movement by the labor movement itself. I have already referred to some facts with regard to this, and I will just add certain additional ones.

The American Federation of Labor-Congress of Industrial Organizations' constitution contains provisions directed toward preventing Communist influence in labor unions that

are affiliated with that organization. In addition, the AFL-CIO has promulgated a code of ethical practices with respect to racketeers, crooks, Communists, and Fascists, which requires that affiliated unions insure, through their constitutional and administrative measures, that no one representing Communist influence hold office or influence policy.

In addition, it should be pointed out that forty unions have constitutions which make Communist Party members [fol. 264] ineligible for membership in the union, those unions representing six million employees. There are fifty-nine union constitutions which make Communist Party members ineligible for holding office, those unions representing ten million employees.

The Court: Excuse me, but how much longer will the offer take?

The Witness: I suppose it will be about half an hour.

The Court: We will take a couple of minutes recess.

(A short recess was taken.)

By Mr. Rabinowitz:

Q. Will you proceed, Professor Emerson?

A. There are only two further matters that I wish to point out in connection with the considerations which go into account as to the Government's interest.

One is that considerable information was already available to the Government and to the Committee on Un-American Activities with respect to the problems concerning which they sought the answers here. I under- [fol. 265] stand that this has been an issue in this proceeding itself, and I don't undertake to comment on that aspect of it. But from my study of the reports of the Committee, particularly the 1956 report and the 1957 report, which summarize proceedings in the two years immediately preceding the hearing in this case, it is evident that the Committee had taken substantial testimony on the questions that they adressed themselves to in the Gary proceedings. This testimony had been taken in connection with hearings held in New Orleans, Buffalo, North Carolina, Denver, St. Louis, New Haven, and Youngstown. In addition, the Federal Bureau of Investigation and other intelligence

agencies of the Government have considerable information with respect to these matters.

Finally, I point out that it would be possible for the Committee to obtain substantial information on the basis of voluntary testimony—as a matter of fact, most of its information that it has obtained has come from volunary sources—and that therefore the necessity of recourse to [fol. 266] compulsory testimony becomes less significant.

That concludes my statement of the considerations that must be taken into account with respect to the Government's interest.

I now turn to the other side of the scales and consider the interest of the individual in freedom of speech and the interest of society in freedom of speech.

Let me first point out, with respect to these interests, the nature of the interest involved.

First, as to the interest of the individual: First of all is the interest of the individual in his right of expression. He, as a person, as an individual, as a human being, has a right to realize himself by expressing his views, his ideas. Such freedom of expression is essential to individual integrity and dignity and the right to develop and realize one's potentialities. This as the primary basis of the individual's interest has I think been recognized by all writers who have commented on the right of political [fol. 267] expression. One finds it originally in Milton, and also given expression by Jefferson, Mill, Professor Chaffee, Justices Holmes and Brandeis, and many others.

This significance of individual expression has been, I think, confirmed by psychological and sociological findings in recent years, embodied in the writings of such persons as Erich Fromm, Rollo May, David Reisman, and others. These writers deal with a major problem of contemporary society, perhaps the basic problem, what they call the problem of alienation, that man in modern society feels a stranger to his community; that he doesn't really feel himself a part of society, and that he is controlled by impersonal forces; that this feeling is the basis of the malaise of the present civilization.

It seems to me that the implication of this is that in order for a man to be an integrated, healthy, mature person, he must be free to express himself, and to live his own life, and

I think these psychological findings support that basic right of individual expression.

[fol. 268] Again, the individual has also a right of silence, a right not to be forced to speak. This was a right which was recognized in the classic flag salute case. It has been discussed by Justice Brandeis as a right of privacy. It is a right that is essential to human dignity, the right, again, to live one's own life. And I think that this right of silence, the right not to be forced to state one's beliefs, opinions, or associations, is particularly important in modern society when so many pressures tend toward conformity, and the individual finds it much more difficult, in view of the deprivations against unorthodoxy, to maintain his own independent existence.

Finally, with respect to the interest of the individual, it involves also the right of association, the right to associate with others. This was a right which was won more gradually than other parts of the right of free expression, but I think is now generally recognized. It is based on the weakness of the individual as a single person to accom-[fol. 269] plish political or social change and the importance of an organization in which he can participate. In a sense, the right of association is complementary, one might say, to the right of silence. A man must both live alone and live with others.

Now, as to the nature of the interest of society in freedom of political expression, society's interest in free expression is a basic and absolutely fundamental principle of the democratic process. It rests upon the whole basis of our democratic institutions, namely, that the people are the sovereign power in our form of government; that the Government and its members are servants of the people, who have and continue the sovereign power. It is therefore the people who make decisions through the Government, and the Government that carries them out, but the ultimate right of decision rests with the people of the country as a whole.

If this be accepted, and it is commonplace as our view of our democratic society, it is then essential to have full discussion of all matters on which the people may be called [fol. 270] upon to make judgment, and this right includes not only the right to speak ones self, but also the right to

hear the views of others. The only alternative to a system of full and open discussion of this sort is a system of resolving questions by force. That of course is not part of our democratic system.

Not only is the right of expression a fundamental part of a democratic society, but it is also, as Mill particularly has pointed out, necessary to a healthy functioning of society. Every society, as he indicated, requires criticism, requires opposition, requires challenge, to its most basic assumptions, as well as to matters which are more on the surface. Otherwise in a society, the reasons for certain positions, even if those reasons are correct, become less sharp, and become forgotten, so that we accept our principles and our way of doing things purely because it has been done in the past, without knowing or understanding the basis on which we act. Such a society becomes very vulnerable to change and inflexible, unable to adapt itself to changes. It is [fol. 271] therefore necessary to have the fullest and most open kind of expression.

This is, then, the nature of the interest on the other side of the scales.

I turn now to considerations which should be balanced, which should be taken into account, in appraising that interest. This deals mainly with the impact of committee investigations of political ideas, beliefs, associaitons, and activities, the impact of such investigations on the right of the individual and the right of society to free expression.

The effect on the individual, as I think is now well recognized, is most serious. The harassment of calling an individual before an official body, such as a committee, and putting questions to him, often in a hostile way, certainly is an experience which many people do not wish to undergo, and the mere process of calling and questioning, particularly, as is true in this case and in many other cases, where the questions are with respect to ideas or activities that are exceedingly unpopular, the impact of that is a very [fol. 272] serious one on the individual's willingness to express himself.

There are also most important economic repercussions on witnesses who have been called before committees. Many industries have policies of discharging persons who do not act in certain ways before legislative committees.

It may be that a career in a profession or an academic career is not possible after a committee has extracted material with respect to one's political beliefs or associations. Certainly one's political influence declines. No one listens to what a person says who has been branded by the Committee as a member of the Comunist Party or influenced by Communist ideology.

There is also social stigma. One gets telephone calls at night, and one's friends avoid one in the situations, all of which means that the Committee exercises a tremendous impact upon any individual who is forced to reveal, over his objection, his political ideas or associations.

It is, furthermore, not only the impact on the individual [fol. 273] who is called before the committee that is important, but the impact upon others. Perhaps this is even more important, because there are many more others, and because the others are less likely to be of the same temper as those who were sought out by the committee, that is to say, they are perhaps more timid or uncertain about expressing themselves or engaging in political activity. In any event, the impact spreads throughout the whole country and throughout the whole area of political activity and association.

One particularly important aspect of this is the effect on the right of association. Persons become fearful of joining associations which may later be attacked by a legislative committee. They become fearful of joining associations which may have in them people who will be subject to attack by a legislative committee. And consequently, since one cannot tell in advance what positions an organization will take, or what members it may have, the [fol. 274] only recourse is to avoid joining organizations altogether, and this tends to be one strong impact of the committee, that it sharply curtails freedom of association.

It should be emphasized, also that it is impossible to confine the impact of the Committee of the Communist Party or to matters closely or entirely related to the Communist Party. The Committee does not and cannot really draw a hard and fast line between Community Party activities and other activities which look as though they might be Communist Party activities or other activities which may coincide with Communist Party activities. There is swept

into the net the whole area left of center, one might say, and it all becomes smeared, as it were, with the same color, although it may not be what the Committee claims it is after. Such a blurring of lines is inevitable in any administrative organization, and the Committee has become a fairly large administrative organization, with its staff. The whole dynamics of an operation of this sort means that the [fol. 275] impact spreads far beyond the members of the Communist Party. One might say that they are perhaps least affected, in terms of their freedom of association.

I can illustrate these matters by various examples, but I mention only one or two, things of which I have some personal knowledge. One is the impact on students at a university of the activities of legislative investigating committees into political beliefs and associations. My experience has been that students are quite concerned about joining organizations or committing themselves to matters which have been or may later come under attack by committees. They are interested in those problems, but not inclined to be active or committed to their solution.

For instrance, in my classes, both in constitutional law, in connection with the Konigsberg case, and in political and civil rights, there has been discussion as to whether members of the Communist Party should be allowed to be members of the bar. I know from the discussion in class, [fol. 276] which I think is reasonably open, what the views of the various members of the class on this may be. The majority of them, rather large majority, have at least stated the position, and I think it is their correct position, that whether a lawyer is a member of the bar should not depend upon whether he is a member of the Communist Party but upon the qualifications, the merits. When, however, the students were called before the character committee for admission to the bar, they were asked the question, in many instances, as to whether or not they believed a member of the Communist Party should be a member of the bar. Many of them, contrary to the view that they had expressed privately, expressed the view that a Communist should not be admitted to the bar. That I think is an indication of the most unfortunate consequences of an attitude for which I think the legislative committees are very largely responsible.

It seems to me a very poor way for a person to enter the legal profession, by being forced to conceal his views on [fol. 277] peril of knowing that he will be in difficulties if he does not. And it is that kind of an impact, as well as the impact of being noncommitted and unwilling to participate in the solution of significant problems that I think is quite widespread as the result of inquisitions, or investigations, pardon me, of legislative committees.

I find a very similar feeling in organizations dealing with foreign policy. There are very few, if any, organizations which express a point of view different to the official American State Department view on foreign policy. It is inconceivable to me that there aren't many people who don't agree with our foreign policy, but that does not reflect itself in organizations. And those that I have come in contact with have been particularly concerned about who else might be in the organization or whether it should take a position at all on these matters for fear that its individuals will be harassed and its whole usefulness destroyed by a public investigation.

I will add only one other consideration here with respect [fol. 278] to the factors to be taken into account in this balance, and that is, in my opinion, the general balance today between forces pressing toward an open society and those toward a closed society is very much in favor of the latter, generally speaking; that is to say, I think the forces in our society which tend to be restrictive and to suppress independent thinking and activity are greater than those which would encourage independent activity.

In the Government, for instance, not only has the Government taken over regulation of economic and other matters on a very extensive scale, but its loyalty programs have been very extensive and very repressive in their way. It has been estimated that there are in the neighborhood of twelve million persons in the country that are subject to loyalty tests, and that is a constantly moving number, because that is the number at any one time, and that number does not also include the families and dependents of such persons.

[fol. 279] The economic organization of our society presses in this direction, too; the large units which leave no room for individuals, mass production methods; similar-

ly, the mass media, the newspapers, radio, television, pound out the same message to us on a rather low level. Educational institutions which should be the ones to counteract to the largest extent this pressure toward conformity do not always do that. They are much to restricted. They fail to deal with controversial issues. The courses teaching socialist or Marxist theory, which is held by a great many people in the world, are few and far between.

In short, it seems to me that as of this time what is needed, in terms of freedom of expression, is that society encourage independence, unorthodoxy, and differences. I think it is essential, if society is to meet the challenges of today and to adjust itself to the rapid changes which are taking place. So that from an overall point of view, it would be important that the courts not take any action [fol. 280] which will discourage, rather than encourage, forces for an open society.

Q. Professor Emerson, in your opinion, in view of the facts that you have stated, in whose favor should the balance be struck between the various interests here at stake?

Mr. Keeney: If the Court please, may I interrupt? We still have an offer of proof, and I am not required to make any objection.

The Court: Well, I think this is a different question.

Mr. Keeney: May we have the question read, then?

(question read)

Mr. Rabinowitz: I should think this would be part of the offer of proof, your Honor. I intended it to refer back to his testimony.

The Court: You are offering it as part of the offer of proof?

Mr. Rabinowitz: That's right.

Mr. Keeney: In that event, there is no necessity for my [fol. 281] making an objection.

The Court: Well, you do what you wish.

Mr. Keeney: I have already objected to the whole line, your Honor.

The Court: Well, as I understand, Mr. Rabinowitz's statement is that it is part of the offer of proof.

Mr. Kenney: We stand on our original objection as to all of the testimony.

The Court: It may be considered as part of the offer of proof. Of course, it is only an offer of proof, and not accepted as evidence.

A. My answer is, on the basis of the foregoing considerations, it is my opinion that the interests of the Government in obtaining answers to the questions put to this defendant as an aid in developing further legislation to protect internal security are substantially outweighed by the interest of the individual in freedom of speech or silence, as he may prefer, and by the interest of the community in maintaining freedom of political expression and [fol. 282] other conditions essential to maintaining an open society.

MOTION TO RECONSIDER RULING REJECTING TESTIMONY AND OBJECTION THERETO

Mr. Rabinowitz: Now, your Honor, may I move for a reconsideration of your Honor's ruling rejecting the testimony, in view of the testimony that has been given? I think the testimony was largely factual in its nature, and I think it was highly relevant to the issues that are before the Court in this case.

. . . . . .

[fol. 283-287] Mr. Rabinowitz: Your Honor, just before the recess, I had moved that your Honor reconsider the decision made before Profesor Emerson testified, and I now press that motion.

I have nothing that I can add to what I said before except I think the content of the testimony makes clear that it is relevant and important on the issue to which it is addressed.

Mr. Keeney: Your Honor, the Government's position remains the same. In fact, we feel that it is fortified in view of the nature of Professor Emmerson's testimony.

. . . . . .

[fols. 288-328] RULING OF THE COURT DENYING MOTION

The Court: Well, I repeat what I said in ruling on the objection to the receipt of the testimony, and that is, first, that I think the question has been decided by the Barenblatt decision.

Aside from that, and independently of that decision, it seems to me that expert testimony of this kind is not material in that it is not a question of fact as to what elements go to make up the balance of interests, public and private, but a legal matter, which is within the province of the Court to decide; and it is not a subject of expert testimony.

For that reason, I am going to deny the motion.

Mr. Rabinowitz: I have nothing further, your Honor.

(And thereupon the witness was excused.)

[fol. 329] FINDING OF THE COURT

The Court: In the case of United States vs. Yellin, Hammond Criminal No. 3023, the matter comes on this morning for finding after trial and arguments. I have had an opportunity since the arguments yesterday, pursuant to my stated intention at the conclusion of the hearing, to examine the exhibits that were introduced.

After considering all of the evidence that was admitted, the Court finds the defendant guilty as charged in Counts I, II, III, and IV.

Mr. Yellin, will you stand, please?

SENTENCE

I am going to pronounce sentence, but I think I will say this in respect to the sentence: I have had a chance to look at the testimony and exhibits that were introduced at the hearing at Gary before the subcommittee, in which the refusal to answer questions, which is the basis of this charge, happened. You are not charged, of course, with failure to disclose your educational background, or with the concealment of your educational background, that is, your college background, which was in the City College of

New York and University of Michigan, but it seems to me [fols. 330-335] that it is significant, in the context of this case, that you chose not to reveal that you had an extensive college education, and that you merely put down that you were a high school graduate when you applied for employment at the United States Steel Corporation. I feel that that has a significant bearing, not on the guilt question, but certainly on the question of what sentence should be meted out.

[fol. 336] The Court: You may be seated for a minute.

In passing sentence, regardless of what has been said this morning, I do think, as I said, that I should take into consideration the defendant's failure to fully disclose his educational background, even though it took place many years ago. In the context of this case, while that happened many years before the events which are the basis of the charge here, it seems to me that it has a bearing and that it should have a place in the way in which the Court should [fol. 337] view this matter because of the kind of contempt that is involved—contempt of Congress.

As I pointed out, these questions certainly have to do with facts, albeit they are matters which relate to the defendant's knowledge of facts and his participation in those facts. Facts which the Committee had a right to inquire into or to find out about, and they did not involve a violation of any constitutional right of freedom of speech or the First Amendment. He was aware, at the time that he was asked these questions, that they were being asked, and he knew fully the risk that he was taking when he refused to answer; and it was a wilful refusal.

Thereafter, if there had been any contriteness shown at any time after the hearing, or a change in viewpoint, or if Mr. Yellin would be willing to disclose to the Committee the facts which they are entitled to have as to his knowledge of and his participation in the efforts of the Communist Party to colonize or organize certain groups within the steel industry in Gary, if, as charged, he was a member of [fol. 338] the Communist Party—it is in the evidence that, he was—it seems to me there would be a different situation as to the question of punishment. There is certainly nothing to indicate that he is willing to state the facts as to his participation, whatever they are; he is not willing today, apparently.

It is not facts as to beliefs, but facts as to active participation in efforts which have to do with activities which have been recognized as inimical to the welfare of this country. Under those circumstances, I think the proper governmental authorities, including the Congressional Committee on Un-American Activities, have the right to make inquiry, for legislative purposes, as to those activities. If they are not inimical to the welfare and preservation of the United States, then it seems to me there would be no hesitancy on the part of those who are asked to state what activities they engaged in and what they know with respect to the alleged activities of the Communist Party and its members.

I am not unaware that this man has a family. Of course, [fol. 339] every time a person comes up in front of me under these circumstances, I can't help but have some feeling about that, but I think that I have to look at this as I do at every other case where that occurs. I have to consider other things besides that, though I realize it has perhaps some place in the picture; otherwise there would be some discrimination in that respect as to a man who did not have a family.

I will say this, too, before the sentence is passed: I did not have in mind making the sentences consecutive, in any event, but understand the Government's position.

Mr. Yellin, will you stand, please.

I repeat, if you have anything to say, I will hear you before I pass the sentence.

The Defendant: It is quite all right.

The Court: The Court now sentences you to the custody of the United States Attorney General for a period of one year on Count I; a like sentence is imposed on Count II; also, on Count III, and on Count IV. These sentences are [fols. 340-350] to run concurrently.

The Court also imposes a fine of two hundred fifty dollars and costs.

[fol. 351] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 252] GOVERNMENT EXHIBIT No. 1

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

Sam Rayburn,
4th District, Texas.

The Speaker's Rooms
House of Representatives U.S.
Washington, D. C.

The United States Attorney, Northern District of Indiana.

The undersigned, the Speaker of the House of Representatives of the United States, pursuant to House Resolution 658, Eighty-fifth Congress, hereby certifies to you the refusal of Edward Yellin to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities of the House of Representatives conducting an investigation authorized by Public Law 601, Seventy-ninth Congress, and House Resolution 5 of the Eighty-fifth Congress, as is fully shown by the certified copy of the report (House Report 2334) of said committee which is hereto attached.

Witness my hand and the seal of the House of Representatives of the United States, at the City of Washington, District of Columbia, this first day of August 1958.

Sam Rayburn, Speaker of the House of Representatives

Attest:

Ralph R. Roberts, Clerk of the House of Representatives. (Seal.)

[fol. 353] GOVERNMENT EXHIBIT No. 2

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

Ralph R. Roberts,
Clerk.

Office of the Clerk
House of Representatives
Washington, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct copy of House Report 2334 of the Eighty-fifth Congress, second session, as submitted to the House of Representatives July 31, 1958, by Mr. Walter, of Pennsylvania, from the Committee on Un-American Activities and noted in the Journal of the House of Representatives of July 31, 1958, Eighty-fifth Congress, second session.

In witness whereof I hereunto affix my name and the seal of the House of Representatives in the City of Washington, District of Columbia, this first day of August anno Domini one thousand nine hundred and fifty-eight.

Ralph R. Roberts, Clerk of the House of Representatives. (Seal.)

85TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2334

PROCEEDINGS AGAINST EDWARD YELLIN

JULY 31, 1958.—Ordered to be printed

Mr. WALTER, from the Committee on Un-American Activities, submitted the following

REPORT

CITING EDWARD YELLIN

The Committee on Un-American Activities, as created and authorized by the House of Representatives through the enactment of Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 85th Congress, caused to be issued a subpena to Edward Yellin, 150 Woodland, Fort Collins, Colo. The said subpena directed Edward Yellin to be and appear before said Committee on Un-American Activities, or a duly authorized subcommittee thereof, of which the Honorable Francis E. Walter is chairman, on February 10, 1958, at 10 a. m. at city council chambers, City Hall, Gary, Ind., then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee. The subpena served on the said Edward Yellin is set forth in words and figures as follows:

UNITED STATES OF AMERICA
CONGRESS OF THE UNITED STATES

To EDWARD YELLIN, 150 Woodland, Fort Collins, Colorado, *Greeting:*

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to be and appear before the Committee on Un-American Activities of the House of Representatives of the United States, or a duly appointed subcommittee thereof, on February 10 (Monday), 1958, at 10 o'clock, a. m., at City Council Chambers, City Hall, Gary, Indiana, then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee.

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in such cases made and provided.

To U. S. Marshal, to serve and return.

GIVEN under my hand this 21st day of January, in the year of our Lord 1958.

FRANCIS E. WALTER, *Chairman.*

The said subpena was duly served as appears by the return made thereon by the United States marshal, who was duly authorized to serve the said subpena. The return of the service by the said United States marshal being endorsed thereon, is set forth in words and figures, as follows:

> Subpena for Edward Yellin, before the Committee on Un-American Activities of the House of Representatives of the United States.
>
> I made service of the within subpena by handing to and leaving the original of this subpena, personally, with the within-named Edward Yellin, at 150 Woodland Street, Ft. Collins, Colorado, at 3:30 o'clock, p. m., on the 23d day of January 1958.
>
> Dated January 24, 1958.
>
> TOM O. KIMBALL,
> *U. S. Marshal, District of Colorado.*
> By OSCAR A. CRIST,
> *Deputy.*

The said Edward Yellin, pursuant to the said subpena, and in compliance therewith, appeared before a subcommittee of the Committee on Un-American Activities on February 10, 1958, to give such testimony as required under and by virtue of Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 85th Congress. The said Edward Yellin, having appeared as a witness and having been asked the questions, namely:

> Mr. Yellin, where did you reside prior to September 1957?
>
> Will you tell the committee, please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1957?
>
> Were you a member of the Communist Party on the 23d of June 1949, which is the date of application filed in your name for employment in Gary?
>
> Will you tell the committee whether or not in 1957 there were present in any of the steel unions at Gary, Ind., persons who were known to you to have been colonizers of the Communist Party?
>
> Will you tell the committee what stand the Communist Party took in Gary in any of its units with regard to the acts of the Soviet Union in Hungary in 1956?
>
> Are you a member of the Communist Party now?

which questions were pertinent to the subject under inquiry, refused to answer said questions and, as a result of said Edward Yellin's refusal to answer the aforesaid questions, your committee was prevented from receiving testimony and information concerning a matter committed to said committee in accordance with the terms of a subpena served upon the said Edward Yellin.

The record of the proceedings before the subcommittee on February 10, 1958, during which Edward Yellin refused to answer the aforesaid questions, pertinent to the subject under inquiry, is set forth in fact as follows:

MONDAY, FEBRUARY 10, 1958

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Gary, Ind.

PUBLIC HEARING

A subcommittee of the Committee on Un-American Activities met pursuant to call, at 10 a. m., in the council chamber, Municipal Building, Gary, Ind., Hon. Francis E. Walter (chairman of the committee) presiding.

Committee members present: Representatives Francis E. Walter, of Pennsylvania, and Gordon H. Scherer, of Ohio.

Staff members present: Frank S. Tavenner, Jr., counsel, and Raymond T. Collins, investigator.

The CHAIRMAN. The subcommittee will come to order.

Let the record show that, pursuant to law and the rules of this committee, I have appointed a subcommittee for the purpose of conducting these hearings composed of Representatives William M. Tuck, of Virginia; Gordon H. Scherer, of Ohio; and myself as chairman.

The order of appointment of the subcommittee will be set forth in the record at this point:

JANUARY 21, 1958.

To: Mr. Richard Arens
Staff Director
House Committee on Un-American Activities

Pursuant to the provisions of law and the rules of this Committee, I hereby appoint a subcommittee of the Committee on Un-American Activities, consisting of Representatives Gordon H. Scherer and William M. Tuck, associate members, and myself, Francis E. Walter, as Chairman, to conduct hearings in Gary, Indiana, on Monday and Tuesday, February 10th and 11th, 1958, at 10:00 a. m., on subjects under investigation by the Committee and take such testimony on said days or succeeding days, as it may deem necessary.

Please make this action a matter of Committee record.

If any member indicates his inability to serve, please notify me.

Given under by hand this 21st day of January, 1958.

[S] FRANCIS E. WALTER,
Chairman, Committee on Un-American Activities.

The CHAIRMAN. The subject and legislative purposes of this hearing are reflected by the following extract taken from the minutes of a meeting of the committee held on January 15, 1958:

A motion was made by Mr. Scherer, seconded by Mr. Willis and unanimously carried, approving and authorizing the holding of hearings in Gary, Indiana,

beginning on the 10th day of February, 1958, or on such other date as the Chairman of the Committee may determine, and continuing from day to day, and time to time, until the hearings are completed, and the conduct of investigations deemed reasonably necessary by the staff in preparation therefor, relating to the following subjects and having the legislative purposes indicated.

1. The extent, character, and objects of Communist infiltration and Communist Party propaganda activities in basic industry in the Gary, Indiana, area, the legislative purpose being to obtain additional information for use by the Committee in its consideration of Section 16 of H. R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member of the Communist Party with knowledge of the purpose or objective thereof, and for the additional legislative purpose of adding to the Committee's overall knowledge on the subject, so that Congress may be kept informed and thus prepared to enact remedial legislation in the national defense and for internal security when and if the exigencies of the situation require it.

2. Execution by administrative agencies concerned of Public Law 637, of the 83d Congress known as the "Communist Control Act of 1954," relating to the eligibility to exercise the rights and privileges provided under the National Labor Relations Act of labor organizations determined by the Subversive Activities Control Board to be Communist-infiltrated organizations. The legislative purpose is to assist Congress in appraising the administration of the Communist Control Act of 1954 and to enact such amendments thereto as the exigencies of the situation require.

3. Any other matter within the jurisdiction of the Committee which it or any subcommittee thereof, appointed to conduct this hearing, may designate.

Under the provisions of Public Law 601, 79th Congress, the Congress has placed upon this committee certain legislative and investigative duties and, in addition, the duty of exercising continuous watchfulness over the execution of any laws, the subject matter of which is within the jurisdiction of this committee. Accordingly, within the framework of this broad jurisdiction and objectives, this subcommittee of the Committee on Un-American Activities is here in Gary for the purpose of receiving testimony concerning Communist techniques and tactics of infiltration and the extent, character, and objects of Communist Party propaganda activities in basic industries. The importance of this area of inquiry from the standpoint of national security, cannot be overemphasized. Without this information, it would be impossible for the committee to carry out its legislative duties as required of it by the Congress.

In response to the mandate from the Congress to keep constant surveillance over existing security legislation, the committee is constantly surveying the operation of the Internal Security Act of 1950, the Foreign Agents Registration Act, the various espionage statutes, the Communist Control Act of 1954, and similar laws for the purpose of keeping Congress informed of the manner in which laws are being administered and for the purpose of recommending any needed legislative amendments. This mandate will be carried out at this hearing.

The committee recently formulated an Omnibus Security Bill, H. R. 935_, which represents the most comprehensive effort ever made to deal with all problems in the field of internal security. This bill combines numerous proposals for empowering the Government to combat the various aspects of the Communist conspiracy which are not dealt with adequately in our present laws. It is the hope of the committee that factual information obtained at this hearing will be of assistance in the consideration of the numerous provisions of this bill.

The committee is especially desirious of obtaining additional information for use in its consideration of Section 16 of H. R. 9352,

relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and willingly becoming or remaining a member of the Communist Party with knowledge of the purpose or objective thereof.

When investigating Communists and Communist activities, this committee frequently has been met with the false and unfounded charge that it is merely seeking headlines; that we are a group of Fascists; that we are engaged in witch-hunting; and the like. Such charges will not dissuade us from our duty. We seek the facts and only the facts. In the conduct of this hearing, we are not interested in any dispute between labor and management, between one union and another union, or with disputes within a union. We propose to ascertain the facts on Communist activity irrespective of the field in which it occurs.

In the course of the last several hearings of the Committee on Un-American Activities, we have discovered a new technique practiced by Communists for the purpose of disguising their operations. Persons who have been identified by responsible witnesses, under oath, as Communists have themselves denied present technical membership in the Communist Party for the period of time beginning with the announcement of committee hearings. Time and again we have seen instances in which hard-core leaders of the conspiracy deny, while they are under oath, that they are present members of the Communist Party, but refuse to testify respecting past membership as recent as a week or so prior to the hearings or with respect to their contemplated future courses of action. This situation, coupled with our other sources of information, compel us to conclude that they have merely practiced the ruse of resigning technical membership for the purpose of deceit. It is hoped that this pattern will not develop during the hearings here in Gary.

It is the standing rule of this committee that any person identified as a member of the Communist Party during the course of the committee hearings will be given an early opportunity to appear before this committee, if he desires, for the purpose of denying or explaining any testimony adversely affecting him.

I would remind those present that a disturbance of any kind or audible comment during the testimony, whether favorable or unfavorable to any witness or the committee, will not be tolerated. Any infraction of this rule will result in the offender being ejected from the hearing room.

I am particularly happy to be able to say that in this eternal struggle against international communism your own Representative in the Congress, Ray Madden, has made a great contribution in the work that he did with respect to the Katyn massacres. That was a monumental job, and placing the blame where it belongs was long overdue. Your Representative certainly made a very fine contribution by his efforts in that field.

After hearing the testimony of one other witness, Edward Yellin was then called before the committee.

Mr. TAVENNER. Mr. Edward Yellin, will you come forward, please?

The CHAIRMAN. Will you raise your right hand?

Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. YELLIN. I do.

The CHAIRMAN. All right, Mr. Tavenner.

Mr. TAVENNER. Have a seat please.

TESTIMONY OF EDWARD YELLIN, ACCOMPANIED BY COUNSEL, VICTOR RABINOWITZ

Mr. TAVENNER. Will you state your name please, sir.

Mr. YELLIN. Edward Yellin.

Mr. TAVENNER. Will counsel accompanying the witness please identify himself for the record?

Mr. RABINOWITZ. Victor Rabinowitz, New York.

Mr. TAVENNER. Where and when were you born, Mr. Yellin?

Mr. YELLIN. July 2, 1927, Bronx, New York.

Mr. TAVENNER. Where do you now reside?

Mr. YELLIN. Fort Collins, Colorado.

Mr. SCHERER. I cannot hear the witness.

The CHAIRMAN. Where?

Mr. YELLIN. Fort Collins, Colorado.

Mr. TAVENNER. How long have you lived at Fort Collins, Colorado?

Mr. YELLIN. Since just about September of '57.

Mr. TAVENNER. '50?

Mr. YELLIN. September '57.

Mr. TAVENNER. Where did you reside prior to——

Mr. RABINOWITZ. Mr. Counsel, I wonder whether it would be possible to read into the record the exchange of telegrams between myself and the committee in connection with the witness's testimony. I would like to have it appear in the record.

The CHAIRMAN. We will decide whether it will be made a part of the record when the executive session is held. Go ahead.

Mr. RABINOWITZ. Mr. Chairman, I sent the telegrams because I wanted them to appear. I do not care whether they appear publicly or not. I do want it to appear that that exchange of telegrams occurred. I did not do it just to increase the revenue of the telegram company.

The CHAIRMAN. Well, whatever the reason was, whether it has been stated or otherwise, it will be considered in executive session.

Mr. RABINOWITZ. May I state——

The CHAIRMAN. Do not bother. You know the privileges given you by this committee. You have appeared before it often enough. You know as well as anybody.

Go ahead, Mr. Tavenner.

Mr. TAVENNER. Mr. Yellin, where did you reside prior to September 1957?

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Tavenner, is that right?

Mr. TAVENNER. Yes.

Mr. YELLIN. Mr. Tavenner, if I may I would like to say just a few words before I answer that question to state my grounds as to what my position will be on answering questions.

The CHAIRMAN. Just answer this question, not your grounds for answering questions that have not been asked.

Mr. YELLIN. Then let me say that I feel that this question and this line of questioning will probably lead into certain areas of my freedom of beliefs, and I feel that I would like to say just a few words as to why I would not care to answer this question.

The CHAIRMAN. It is not the case of whether you care to answer or not. It is a question of do you or do you not answer the question.

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Congressman, let me put it this way then: I will refuse to answer that question, and I would like the privilege——

The CHAIRMAN. What is the question, Mr. Tavenner?

Mr. TAVENNER. The question was where the witness lived prior to September 1957.

The CHAIRMAN. And you feel honestly that if you answer the question of where you lived before September of last year, you might be confronted with a criminal prosecution, is that it?

Mr. YELLIN. No. I didn't say that.

The CHAIRMAN. You did not say that, but is that not what you mean?

Mr. YELLIN. May I say what my objections are? If I can say what they are——

The CHAIRMAN. Go ahead.

Mr. YELLIN. Then you can question.

The CHAIRMAN. Go ahead.

Mr. YELLIN. Since I received the subpena to appear before this committee, I did the natural thing. I contacted counsel. I wrote to various sources for whatever legal information I could get, and I went to the public library to study as much of the law as I could.

Now, just the fact of being called before this committee creates a certain impression in the public eye which I do not like. I don't like to have my loyalty questioned of my character questioned. I feel that I have committed no crime. I have engaged in no acts——

The CHAIRMAN. Isn't this the best place to clarify the atmosphere? If you feel as you say you do, and I am sure that you do, is this not a great opportunity to eliminate whatever question might be in anybody's mind, particularly mine, about your activities?

Mr. YELLIN. Mr. Walter, I do not feel that this is the place for myself, as an individual and as a citizen, to discuss my beliefs, my associations, or whatever expressions of opinion I have ever made. I feel that ideas in the democratic process should be settled, should reach some kind of an understanding, in the market place of ideas and not at a congressional investigation. This is a personal opinion of mine. I believe the entire democratic process revolves around settling things in a free and open market, and this is not the place for it. This is a hearing. It is not an expression of public opinion.

Furthermore, after conferring with my counsel——

Mr. SCHERER. We are not asking you about your ideas or opinions. We are asking you about your activities within the conspiracy.

The CHAIRMAN. We are asking his address.

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Tavenner, I mean to reiterate all of the reasons I have given——

The CHAIRMAN. Then explain, Mr. Tavenner, the reasons——

Mr. YELLIN. As grounds. They are all grounds for refusal to answer.

The CHAIRMAN. Explain, Mr. Tavenner.

Mr. TAVENNER. It has been testified here that colonization of young men in the middle of their educational courses in industry was a deep-seated plan of the Communist Party to strengthen itself within basic industry. The chairman's opening statement indicated that the activities of the Communist Party within basic industries was the subject of inquiry here.

Let me ask you: You were present during the testimony of the former witness?

Mr. YELLIN. Yes, sir.

Mr. TAVENNER. The statement was made here of the practice of the Communist Party in colonizing industry at Flint, Michigan; at the University of Colorado, which is at Fort Collins, Colorado, where you now reside; and other places.

In order to understand the full tactics of the Communist Party in its operations here in Gary, it is necessary the committee understand fully the extent of such practices, the full purposes of it, and the methods by which it is put into effect. That is the connective reasoning of the committee in asking the question. It is certainly apparent from that explanation.

So with that explanation, Mr. Chairman, I ask that the witness be again directed to answer.

The CHAIRMAN. You are directed to answer the question.

Mr. YELLIN. Mr. Congressman, I am fully aware, on the basis of the previous witness's testimony and on the basis of what committee counsel has just said, that certain impressions will be created in the public eyes as regards myself as an individual. However, I cannot, in good conscience or within legal protection, answer that question on the grounds I have already stated.

Mr. SCHERER. I think a very bad impression will be created in the public mind because of your making at least 5 misrepresentations on your application for employment to the Carnegie-Illinois Steel Corporation.

Mr. YELLIN. I realize there will be many bad impressions created but, as I said, I am powerless to straighten out those impressions at this time.

The CHAIRMAN. I could not conceive of a better place to straighten out all these impressions. All you have to do is answer these questions.

Did you state, or were you asked, where you are now employed? Where you are employed at the present time?

Mr. YELLIN. I will decline to answer that question on the grounds I have already stated.

Mr. SCHERER. I ask you to direct the witness to answer the question.

The CHAIRMAN. You are directed to answer the question, where are you employed?

Mr. YELLIN. I will decline to answer that question, sir, on the grounds stated.

The CHAIRMAN. Go ahead, Mr. Tavenner.

Mr. TAVENNER. Were you a member of the Neafus Club of the Communist Party at the University of Michigan?

Mr. YELLIN. I will decline to answer that question, sir, on the grounds already stated.

Mr. TAVENNER. Were you acquainted with a person at the University of Michigan by the name of Francis X. T. Crowley?

Mr. YELLIN. I decline to answer that question on the grounds already stated, sir.

Mr. TAVENNER. Mr. Crowley testified before the Committee on Un-American Activities in June of 1954, at which time he identified you as a member with him of the Neafus Club of the Communist Party at Ann Arbor. Was he correct in his identification of you?

Mr. YELLIN. I will decline to answer that question, sir, on the grounds I have already stated.

Mr. TAVENNER. Were you a member of the Communist Party on the 23d day of June 1949, which is the date of application filed in your name for employment in Gary?

Mr. YELLIN. I will decline to answer that question on the grounds I have already stated.

Mr. TAVENNER. Mr. Chairman, may I have a direction that that question be answered in light of the explanation already made?

The CHAIRMAN. You are directed to answer the question.

Mr. YELLIN. I decline to answer, sir.

The CHAIRMAN. Do you understand that when Mr. Tavenner asks you a question about a man who testified that you and he were members of a Communist group at the University of Michigan, this testimony was under oath. This man swore that you and he were members of the Communist Party. Did you understand that?

(The witness conferred with his counsel.)

Mr. YELLIN. Do I understand that he was under oath?

The CHAIRMAN. That is right.

Mr. YELLIN. Yes, sir.

Mr. TAVENNER. Were you active in the American Veterans Committee prior to June 1949?

Mr. YELLIN. I will have to decline to answer that. I think it is a violation of my freedom of associations.

Mr. TAVENNER. Were you acquainted with a person by the name of Edward Shaffer from Pittsburgh?

Mr. YELLIN. I decline to answer that question, sir.

Mr. TAVENNER. During the examination of Edward Shaffer before this committee during the conduct of hearings in 1954, in fact, in May 1954, there was introduced in evidence a photostatic copy of the Detroit News bearing the date of January 7, 1949, entitled "Three Heed AVC Ban on Reds." It is Exhibit No. 2 in that hearing. I will read part of that exhibit:

> Three students resigned today from the University of Michigan chapter of the American Veterans Committee because of a ruling adopted by the national AVC [meaning American Veterans Committee] convention in November calling for the ouster of members who belonged to the Communist Party.
>
> They were [that is, the three who resigned] William Carter, 3473 Townsend Avenue, Detroit; Edward Shaffer, of Pittsburgh; and Edward Yellin, of New York.

Mr. SCHERER. That is what we are going to ask him.

The CHAIRMAN. You don't know.

Mr. SCHERER. His activities with a conspiracy.

Mr. YELLIN. After conferring with counsel, I can only come to one conclusion, and that is that this line of questioning would infringe upon my rights under the first amendment to the Constitution. Now the Supreme Court in its recent decision in the Watkins and Sweezy cases has specifically stated that a legislative committee can only investigate the area pertinent to legislation. Now, the Constitution of the United States and the first amendment——

The CHAIRMAN. May I interrupt you at that point? I notice you have carefully avoided the Barenblatt case that followed the two cases that you mentioned, and in that case the Supreme Court held that we were charged with doing just exactly what we are doing now. That was U. S. against Barenblatt.

Mr. YELLIN. Mr. Congressman, I am not entirely familiar with the Barenblatt case.

The CHAIRMAN. You expressed great familiarity with the Watkins case.

Mr. YELLIN. The Supreme Court referred that case back to the court of appeals and the Supreme Court did not rule on this. It was just the court of appeals of some sort which just made this ruling, not the Supreme Court.

The CHAIRMAN. Then as a layman, I will straighten you out. What the Supreme Court did was to say that the decision of the Circuit Court of Appeals should stand and they refused to grant a writ of certiorari to review it.

Mr. RABINOWITZ. As a lawyer, Mr. Chairman, I would like the opportunity to straighten you out. But I guess this is not the chance.

The CHAIRMAN. You kind of lawyers could not straighten me out on anything. Go ahead, please.

Mr. YELLIN. May I continue, Mr. Congressman? I am not a lawyer.

Mr. TAVENNER. Let me interupt you a minute. You constantly referred to "this line of questioning." The only question I have asked you is where did you live prior to September 1957.

Mr. YELLIN. Mr. Tavenner——

The CHAIRMAN. Certainly one question could not be construed as a line of questions. You have been asked only one question.

Mr. YELLIN. May I continue?

The CHAIRMAN. Why don't you answer the question? Where did you live? That is all we want to know.

Mr. YELLIN. I heard the previous witness. I read proceedings of this committee in past cases. I read the newspapers concerning the history of this committee. If I say this line of questioning, I should say this particular question. It is pretty obvious where the questions will lead from what has gone before. So it is no sense in pinning it down and waiting to later. It is going to lead to a certain point. There is no question about that.

Now the grounds on which I object are the following: That the first amendment to the Constitution specifically says that Congress shall make no law abridging the freedom of speech. Now, therefore, Congress cannot investigate in that area because they cannot legislate

in that area. Furthermore, nobody can investigate in my conscience, in my personal beliefs. I have committed no unlawful acts; and, therefore, any questioning can only lead to opinions, expressions, associations, and beliefs and not any unlawful acts. Therefore, under the first amendment, I think I am fairly reasonable in objecting to any questions that will lead toward that line, investigating my freedoms.

Secondly, I am informed that the enabling resolution of the Congress of the United States establishing this House Committee on Un-American Activities is very vague and, therefore, leads to the possibility that I could not be accorded my rights under due process of law, on the basis of the fact that the courts cannot properly judge what the intent of this committee is due to the fact that it was established under a rather vague resolution.

Furthermore, the courts have ruled that the only questions this committee can ask me as an individual are questions which can be pertinent to any legislation.

I don't feel this question is pertinent to any legislation the committee might be investigating and, furthermore, as I said before, the committee cannot even investigate legislation pertaining to the first amendment.

Therefore, I will have to respectfully submit that I cannot answer that question.

The CHAIRMAN. You said, "I cannot." Of course, you are not under any prohibition. You could answer it. You mean, "I will not."

Mr. YELLIN. I cannot under my own moral conscience to uphold the traditions under which I believe.

The CHAIRMAN. Then you do not answer the question for those reasons, is that it?

Mr. YELLIN. Yes, sir.

The CHAIRMAN. All right.

Mr. SCHERER. Now, Mr. Chairman, so that the record is clear, I ask that you direct the witness to answer the question.

The CHAIRMAN. You are directed to answer the question. Where did you live prior to September 1957?

Mr. YELLIN. Mr. Congressman, under the reasons I have submitted, I cannot answer that question.

The CHAIRMAN. You mean you do not answer.

Mr. YELLIN. I will not answer that question.

The CHAIRMAN. All right.

Mr. TAVENNER. You do not rely, in your refusal to answer, upon the self-incriminating clause of the fifth amendment. Is that correct?

Mr. YELLIN. Yes, sir. That is correct. I am relying on my first amendment rights.

Mr. TAVENNER. You were present when the opening statement was made by the chairman of this committee, were you not?

Mr. YELLIN. Yes, sir: I was present at that time.

Mr. TAVENNER. This is a hearing which involves a subject described by the chairman, and it relates to Communist Party activities within the area of Gary. As far as pertinency of the question is concerned, as to which you seem to express some doubt, it would be impossible for us to learn anything from you regarding Communist Party activities in this area without ascertaining whether or not you were here for a period of time.

Now, having explained that and given you that reason as a basis for the committee's asking you that question, I would like to ask the chairman to again direct the witness to answer.

The CHAIRMAN. You are directed to answer the question.

Mr. YELLIN. Mr. Congressman, I cannot answer that question for the grounds already submitted.

The CHAIRMAN. By that you mean that you do not answer. You refuse to answer.

Mr. YELLIN. I will not answer.

The CHAIRMAN. All right.

Mr. TAVENNER. Mr. Yellin, will you give the committee, please, briefly, your formal educational training?

Mr. YELLIN. I believe, and I think the grounds I have already stated are sufficient, that any investigation into my educational background can serve no legislative purposes, is a violation of my rights under the first amendment; and I will not answer that question.

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. YELLIN. Would you repeat that please?

The CHAIRMAN. You are directed to answer the question.

Mr. RABINOWITZ. He asked the question be repeated.

Mr. YELLIN. I asked it be repeated.

The CHAIRMAN. What question?

Mr. YELLIN. The last statement addressed to me.

The CHAIRMAN. You declined to answer that. What did you think you declined to answer?

Mr. YELLIN. I declined to answer any questions pertaining to my education.

The CHAIRMAN. All right. Go ahead.

Mr. TAVENNER. Is it not a fact that you were a student at the College of the City of New York for several years prior to 1948?

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Tavenner, I will refuse to answer that question under the grounds already stated; but it just occurs to me that if the committee knows all these things, I can't see the purpose or the pertinency of asking me what they consider a known fact. Furthermore, it kind of appears to me as if this line of questioning is merely trying to create an impression and expose me for the sake of merely exposing me and not leading to any valid legislative purpose.

The CHAIRMAN. I will assure you that that is farthest from the intention of anybody on this committee, and this committee has never, for the mere sake of exposing, asked a question.

And now I would like to ask you: What do you mean by exposing you? Exposing you to what?

Mr. YELLIN. Well, Mr. Congressman, there has been a great deal of discussion, public discussion, in the newspapers, especially since the Supreme Court decision in Watkins and Sweezy; and pertaining to education, there has been a great deal of discussion in the newspapers about certain lagging that we are doing in our educational system. I should say rather that we have not reached our full potential in our educational system.

The CHAIRMAN. Perhaps too many people have been directing their attention to the wrong things.

Mr. YELLIN. Well, perhaps. One of the often expressed opinions at the universities and in the newspapers is that one of the reasons we have not reached our full potential is due to the fact that freedom of education, freedom of thought, has been, to a large extent, suppressed by committee investigations specifically of this type and of the type Senator McCarthy conducted. This is common knowledge at the universities. People are beginning to feel that freedom of thought and the expression of ideas—whether they be right or wrong, conform to what the majority believe or not—should be settled in a market place of ideas freely without being suppressed.

The CHAIRMAN. All right now.

Mr. YELLIN. Now if I remember——

The CHAIRMAN. We have heard that speech. Will you answer the question about your education?

Mr. YELLIN. You haven't heard it from me, sir.

The CHAIRMAN. What about the 2 years you were at the New York University or wherever it was?

Mr. TAVENNER. City College of New York.

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Congressman, Mr. Tavenner, I have already stated sufficient ground for refusing to answer that kind of question.

The CHAIRMAN. Go ahead, Mr. Tavenner.

Mr. TAVENNER. Mr. Chairman, I desire to offer in evidence a photostatic copy of the college record of Edward Yellin, at the University of Michigan. The first was in the College of Literature, Science and Arts.

May it be marked "Yellin Exhibit No. 1?"

Mr. SCHERER. Did you say at the University of Michigan?

Mr. TAVENNER. Yes, sir.

The CHAIRMAN. All right. Let it be received.

(The document referred to was marked "Yellin Exhibit No. 1.")

The CHAIRMAN. Go ahead.

Mr TAVENNER. An examination of this exhibit, Mr. Chairman, reflects that Edward Yellin was transferred from the College of the City of New York to the University of Michigan.

And in this connection I would like to introduce "Edward Yellin Exhibit No. 2," an additional official record from the University of Michigan, which I will ask to be marked No. 2.

The CHAIRMAN. All right.

(The document referred to was marked "Yellin Exhibit No. 2.")

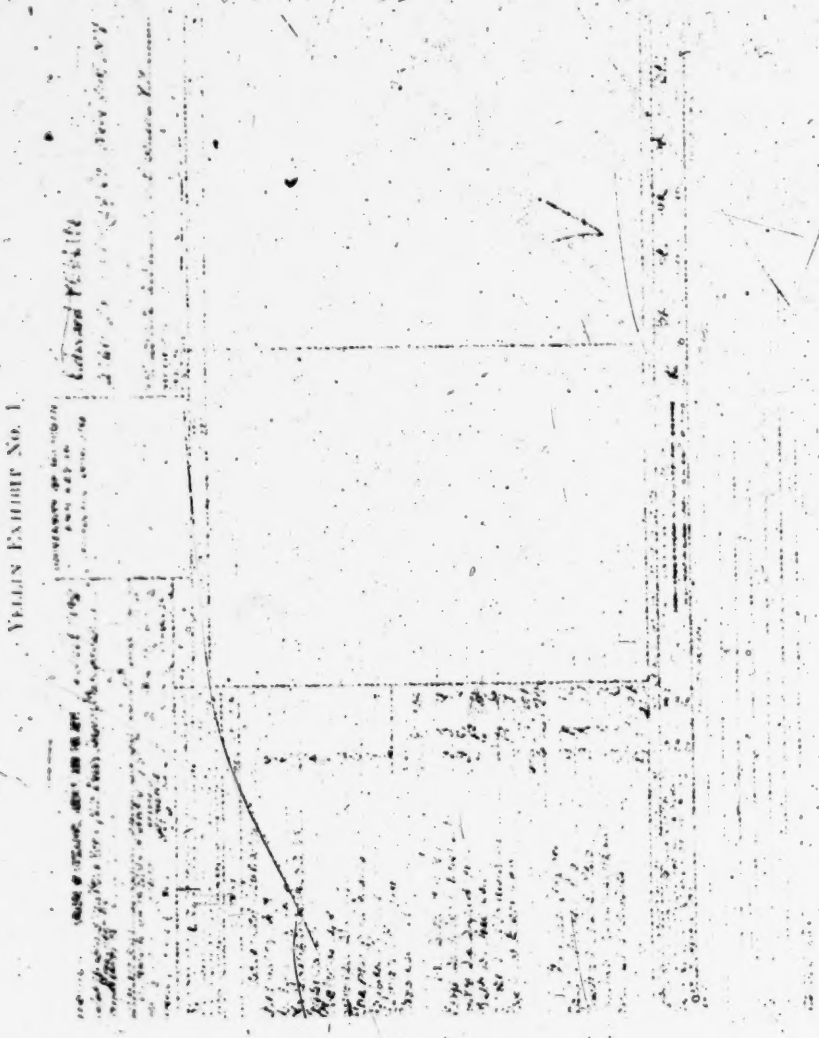
Mr. RABINOWITZ. May I see that?

Mr. TAVENNER. Yes, sir.

(A document was handed to Mr. Rabinowitz.)

(The witness conferred with his counsel.)

Mr. TAVENNER. Mr. Chairman, I call your attention to the fact that Exhibit No. 2 shows that Edward Yellin was admitted to the University of Michigan in February 1948 from the College of the City of New York and Exhibit No. 1 indicates that he was transferred from the College of Literature, Science, and Arts at the University of Michigan to the engineering department at that university in September 1948. It reflects his grades, showing a grade of A in many subjects.

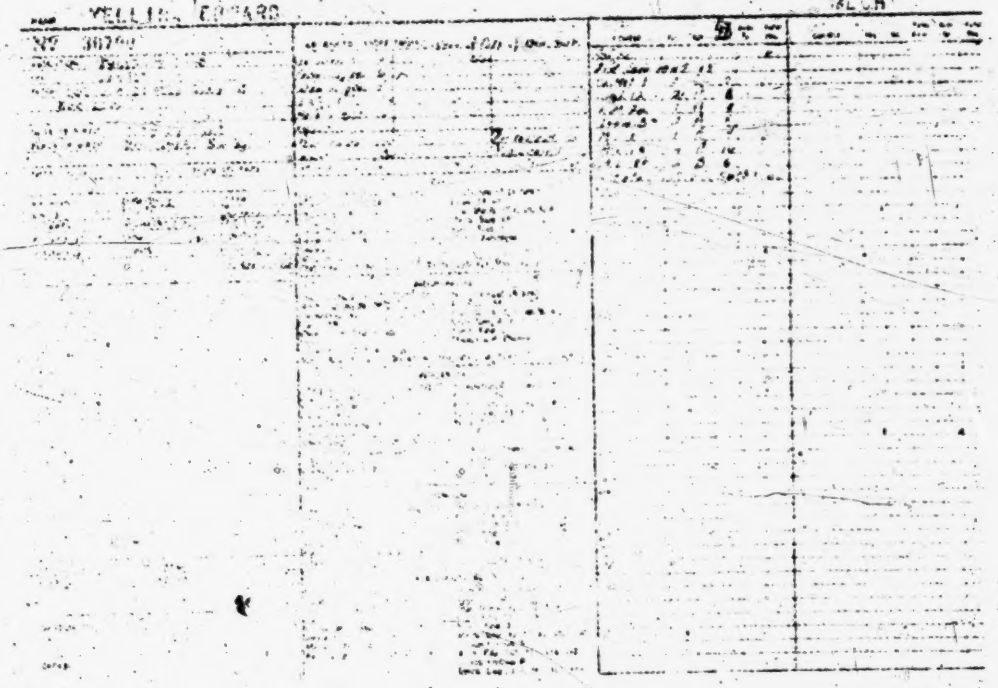


YELLIN EXHIBIT No. 1.

YELLIN EXHIBIT No. 2

UNIVERSITY OF MICHIGAN
COLLEGE OF ENGINEERING

OFFICIAL RECORD



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Mr. TAVENNER. Mr. Yellin, I hand you a photostatic copy of application for employment at the Carnegie-Illinois Steel Corporation.

You will examine it please and state whether or not that appears to be a copy of an application filed by you.

(A document was handed to the witness.)

Mr. YELLIN. I refuse to answer that question on the grounds which I have already stated.

Mr. TAVENNER. Will you examine it please and state whether your name appears at the foot of that application?

Mr. YELLIN. I will. I cannot and will not answer that question, Mr. Tavenner, on the grounds already stated.

Mr. TAVENNER. Mr. Chairman, I offer in evidence as Yellin Exhibit No. 3 the document referred to and ask that it be marked "Yellin Exhibit No. 3."

The CHAIRMAN. For what purpose are you offering it?

Mr. TAVENNER. For the purpose of establishing the time that he came to Gary, Indiana, and the additional purpose of showing what he represented on his application to his would-be employer with regard to his education.

The CHAIRMAN. Did he represent that he had not been to college?

Mr. TAVENNER. His representation was as to his former school work at Stuyvesant, which I believe is a high school in the State of New York, with no answer under the word "college," or any other education.

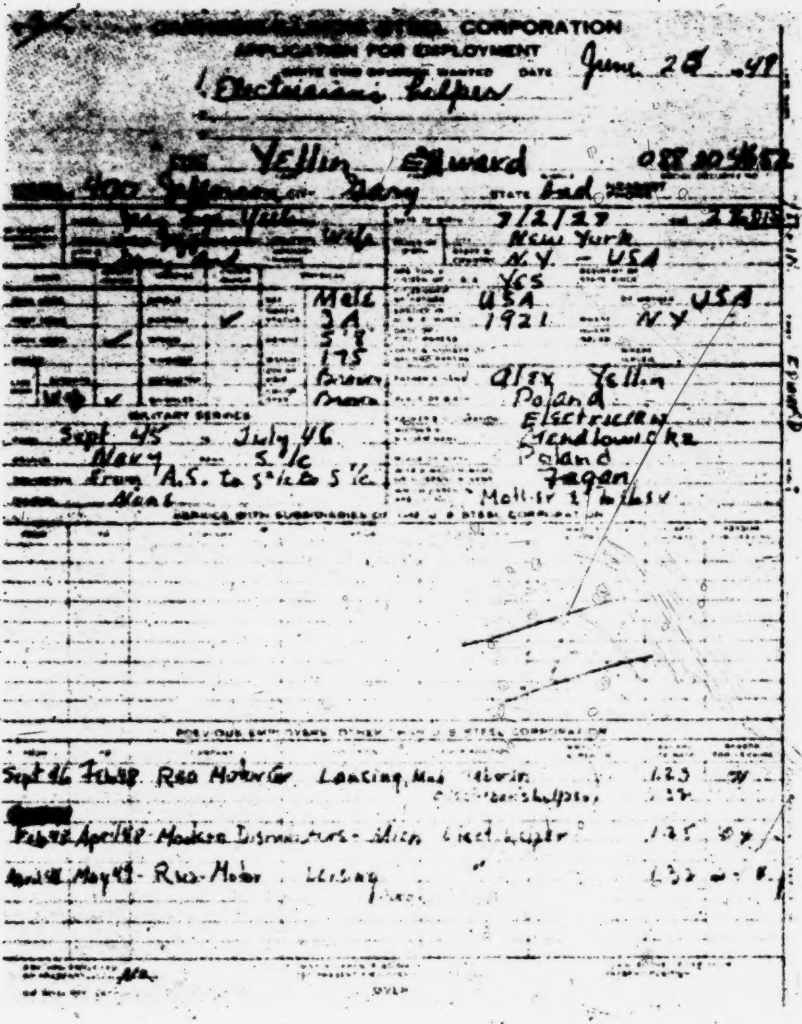
The CHAIRMAN. All right.

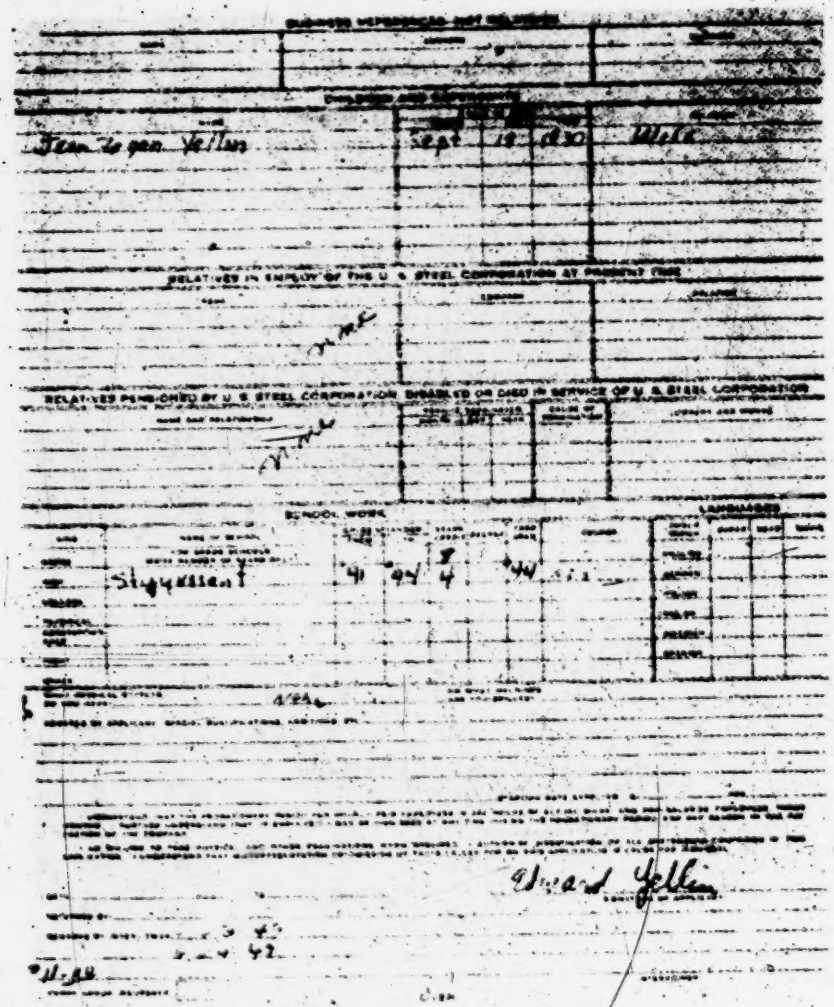
Mr. TAVENNER. Is the document admitted?

The CHAIRMAN. The document is admitted.

(Document marked "Yellin Exhibit No. 3," follows:)

YELLIN EXHIBIT NO. 3




Jean Yellin
Sept 12 1930
Data
RELATIVES IN EMPLOY OF THE U. S. STEEL CORPORATION AT PRESENT TIME
None
RELATIVES PENSIONED BY U. S. STEEL CORPORATION DISABLED OR DIED IN SERVICE OF U. S. STEEL CORPORATION
None
SCHOOL WORK
LANGUAGES
Signature
Edward Yellin

Mr. TAVENNER. Mr. Yellin, I read from this document that it is dated June 23, 1949. Where were you on June 23, 1949? Where were you residing?

Mr. YELLIN. Mr. Tavenner. I will not answer that question on the grounds I have already stated.

Mr. TAVENNER. Did you live at 400 Jefferson Street in Gary, in the State of Indiana, at that time?

Mr. YELLIN. I will not answer that question, Mr. Tavenner.

Mr. TAVENNER. I read from Exhibit No. 3, a statement of previous employment by the applicant: From Steptember 1946 to February 1948 at the Reo Motor Company at Lansing, Michigan. Were you ever actually employed by that company?

Mr. YELLIN. I refuse to answer that question on the grounds already stated.

Mr. TAVENNER. Exhibits Nos. 1 and 2 show that you were at the University of Michigan at Ann Arbor between February of 1948 and at the end of the second semester of the year 1948-49, which meant approximately in June of 1949. Yet we see as an employment given by you on Exhibit No. 3, that you were employed from February 1948 to April 1948 at Modern Distributors, Michigan. Were you so employed there?

Mr. YELLIN. I will not answer that question, sir, on the grounds already stated.

Mr. TAVENNER. Your record of employment shows also employment in April 1948 to May 1949 at Reo Motor's at Lansing, Michigan. Were you ever so employed?

Mr. YELLIN. I refuse to answer under the grounds already stated, sir.

Mr. TAVENNER. Why did you give that record of employment and fail to indicate that you had attended college at the City College of New York and that you had been in the engineering department and the academic department of the University of Michigan?

Mr. YELLIN. I refuse to answer that question, sir, on the grounds already stated.

Mr. TAVENNER. Is it not a fact that at the time you sought that employment in Gary, Indiana, in steel, you were doing it at the instance or under counseling from the Communist Party or leaders in the Communist Party?

(The witness conferred with his counsel.)

Mr. YELLIN. I will have to refuse to answer that question on the grounds already stated.

Mr. TAVENNER. Will you tell the committee, please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1951?

Mr. YELLIN. Sir, I cannot answer that question on the grounds already stated.

Mr. TAVENNER. One of the grounds that you stated was that you did not see the pertinency of what you referred to as "this line of questioning." Do you mean to reiterate that as a part of your answer to the question I have just asked you?

Was your action at that time correctly reported by the Detroit News?

Mr. YELLIN. I will decline to answer that question, sir.

Mr. TAVENNER. Will you tell the committee whether or not in 1957 there were present in any of the steel unions at Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party?

Mr. YELLIN. I decline to answer that question, sir.

Mr. TAVENNER. Mr. Chairman, in light of the explanation made of the pertinency of this line of questioning, I request the witness be directed to answer the question.

The CHAIRMAN. You are directed to answer the question, Mr. Yellin.

Mr. YELLIN. On the grounds I have previously stated, I will not answer the question.

Mr. SCHERER. Those grounds do not include the invocation of the fifth amendment against self-incrimination?

(The witness conferred with his counsel.)

Mr. YELLIN. They do not, sir.

Mr. TAVENNER. Were you a member of the Communist Party in August of 1957?

Mr. YELLIN. I will decline to answer that question on the grounds I have stated.

Mr. TAVENNER. Will you tell the committee what stand the Communist Party took in Gary in any of its units with regard to the acts of the Soviet Union in Hungary in 1956?

Mr. YELLIN. I will decline to answer that question, sir.

Mr. TAVENNER. May I have a direction that the witness answer that question?

The CHAIRMAN. You are directed to answer the question, Mr. Witness.

Mr. TAVENNER. Are you a member of the Communist Party now?

Mr. YELLIN. I decline to answer that question on the grounds I have already stated.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Do you have any questions, Mr. Scherer?

Mr. SCHERER. I have no questions.

Because of the foregoing, the said Committee on Un-American Activities was deprived of answers to pertinent questions propounded to the said Edward Yellin relative to the subject matter which, under Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 85th Congress, the said committee was instructed to investigate, and the refusal of the witness to answer the questions, namely:

> Mr. Yellin, where did you reside prior to September 1957?
>
> Will you tell the committee, please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1957?
>
> Were you a member of the Communist Party on the 23d of June 1949, which is the date of application filed in your name for employment in Gary?
>
> Will you tell the committee whether or not in 1957 there were present in any of the steel unions at Gary, Ind., persons

who were known to you to have been colonizers of the Communist Party?

Will you tell the committee what stand the Communist Party took in Gary in any of its units with regard to the acts of the Soviet Union in Hungary in 1956?

Are you a member of the Communist Party now?

which questions were pertinent to the subject under inquiry, is a violation of the subpena under which the witness had previously appeared, and his refusal to answer the aforesaid questions deprived your committee of necessary and pertinent testimony and places the said witness in contempt of the House of Representatives of the United States.

OTHER PERTINENT COMMITTEE PROCEEDINGS

The following resolution was adopted at the organizational meeting of the committee for the 85th Congress, held on the 22d day of January 1957:

Be it resolved, That the chairman be authorized and empowered from time to time to appoint subcommittees, composed of three or more members of the Committee on Un-American Activities, at least one of whom shall be of the minority political party, and a majority of whom shall constitute a quorum, for the purpose of performing any and all acts which the committee as a whole is authorized to perform

The following is an extract from the minutes of an executive session of the subcommittee of the Committee on Un-American Activities, consisting of Hon. Francis E. Walter, chairman; Hon. William M. Tuck; and Hon. Gordon H. Scherer, held on the 16th day of April 1958, in room 225 Old House Office Building, Washington, D. C.:

The subcommittee was called to order by the chairman who stated the purpose of the meeting was to consider what action the subcommittee would take regarding the refusal of certain witnesses to answer material questions propounded to them in the course of the hearings conducted by the said subcommittee in Gary, Ind., beginning on the 10th day of February 1958, and what recommendation it would make regarding the citation of any such witnesses for contempt of the House of Representatives.

After full consideration of the testimony of the witnesses given at the said hearing in Gary, Ind., a motion was made by Mr. Scherer, seconded by Mr. Tuck, and unanimously adopted, that a report of the facts relating to the refusal of Edward Yellin to answer material questions before the said subcommittee at the hearing aforesaid, be referred and submitted to the Committee on Un-American Activities as a whole, with the recommendation that a report of the facts relating to the refusal of said witness to answer material questions, together with all of the facts in connection therewith, be referred to the House of Representatives with the recommendation that the said witness be cited for contempt of the House of Representatives for his refusal to answer

questions therein set forth, to the end that he may be proceeded against in the manner and form provided by law.

The following is an extract from the minutes of an executive session of the Committee on Un-American Activities, consisting of Hon. Francis E. Walter, chairman; Hon. Morgan M. Moulder; Hon. Clyde Doyle; Hon. Wm. M. Tuck; Hon. Bernard W. Kearney; Hon. Gordon H. Scherer; and Hon. Robert J. McIntosh, held on the 16th day of April 1958, in room 225, Old House Office Building, Washington, D. C.:

The report of the facts relating to the refusal of Edward Yellin to answer material questions was submitted to the committee, upon which a motion was made by Mr. Scherer, seconded by Mr. Moulder, and unanimously carried, that the subcommittee's report of the facts relating to the refusal of Edward Yellin to answer material questions before the said subcommittee at the hearing conducted before it in Gary, Ind., on the 10th day of February 1958, be and the same is hereby approved and adopted; and that the Committee on Un-American Activities report and refer the said refusal to answer questions before the said subcommittee, together with all the facts in connection therewith, to the House of Representatives with the recommendation that the witness be cited for contempt of the House of Representatives for his refusal to answer such questions to the end that he may be proceeded against in the manner and form provided by law.

O

[fol. 376] GOVERNMENT EXHIBIT NO. 3

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

H. Res. 658

In the House of Representatives, U. S., July 31, 1958.

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusal of Edward Yellin to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States attorney for the northern district of Indiana, to the end that the said Edward Yellin may be proceeded against in the manner and form provided by law.

Attest:

Ralph R. Roberts, Clerk. (Seal.)

[fol. 377] GOVERNMENT EXHIBIT No. 15

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

Ralph R. Roberts,
Clerk.

Office of the Clerk
House of Representatives
Washington, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a copy of the Hearings held before the Committee on Un-American Activities, House of Representatives, Eighty-fifth Congress, Second Session, on February 10 and 11, 1958, entitled "Investigation of Communist Infiltration and Propaganda Activities in Basic Industry (Gary, Ind., Area)", as printed by order of the House of Representatives, copies of which are on file in the Library of the House of Representatives, and the original of which is in my custody.

In witness whereof, I hereunto affix my name and the seal of the House of Representatives, in the city of Washington, District of Columbia, this twenty-eighth day of January, anno Domini one thousand nine hundred and sixty.

Ralph R. Roberts, Clerk of the House of Representatives. (Seal:)

INVESTIGATION OF COMMUNIST INFILTRATION AND PROPAGANDA ACTIVITIES IN BASIC INDUSTRY

(GARY, IND., AREA)

HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH CONGRESS

SECOND SESSION

FEBRUARY 10 AND 11, 1958

Printed for the use of the Committee on Un-American Activities

INCLUDING INDEX

UNITED STATES
GOVERNMENT PRINTING OFFICE

COMMITTEE ON UN-AMERICAN ACTIVITIES

UNITED STATES HOUSE OF REPRESENTATIVES

FRANCIS E. WALTER, Pennsylvania, *Chairman*

MORGAN M. MOULDER, Missouri
CLYDE DOYLE, California
EDWIN E. WILLIS, Louisiana
WILLIAM M. TUCK, Virginia

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DONALD L. JACKSON, California
GORDON H. SCHERER, Ohio
ROBERT J. McINTOSH, Michigan

RICHARD ARENS, *Staff Director*

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[1] Released by the committee and ordered to be printed.

PUBLIC LAW 601, 79TH CONGRESS

The legislation under which the House Committee on Un-American Activities operates is Public Law 601, 79th Congress [1946], chapter 753, 2d session, which provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * *

PART 2 - RULES OF THE HOUSE OF REPRESENTATIVES

RULE X

SEC. 121. STANDING COMMITTEES.

* * * * * * *

17. Committee on Un-American Activities, to consist of nine Members.

RULE XI

POWERS AND DUTIES OF COMMITTEES

* * * * * * *

(q) (1) Committee on Un-American Activities.

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * * * *

RULE XII

LEGISLATIVE OVERSIGHT BY STANDING COMMITTEES

SEC. 136. To assist the Congress in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the Senate and the House of Representatives shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the Congress by the agencies in the executive branch of the Government.

RULES ADOPTED BY THE 85TH CONGRESS

House Resolution 5, January 3, 1957

* * * * * * *

RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress,

* * * * * * *

(q) Committee on Un-American Activities, to consist of nine Members.

* * * * * * *

RULE XI

POWERS AND DUTIES OF COMMITTEES

* * * * * * *

17. Committee on Un-American Activities.

(a) Un-American activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * * * *

26. To assist the House in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government.

SYNOPSIS

In Gary, Indiana, February 10 and 11, 1958, the Committee on Un-American Activities continued its investigation of Communist techniques and tactics of infiltration and the extent, character, and objects of Communist Party propaganda activities in basic industry. Fourteen witnesses testified in public hearings and three in executive session.

The committee obtained significant information from John Lautner, an active Communist Party member for more than 20 years before his expulsion from the party in 1950. Mr. Lautner had held many important positions of leadership, including section organizer of the Communist Party in New York City for a number of years, district organizer of the Communist Party in West Virginia for 5 years, member of the Nationality Commission of the Communist Party, member of the National Review Commission of the Communist Party and Chairman of the Review Commission for the State of New York. He testified that steel is one of the basic industries on which the Communist Party must concentrate in its efforts to win over the decisive section of the working class.

Describing the tactical maneuvers of the Communist Party in its infiltration of labor unions, Mr. Lautner asserted that "colonizers" were sent to Gary, Indiana, for the purpose of building the party in the steel industry. He defined "a colonized Communist" as "one who is a professional revolutionary, who has uprooted himself from his home environment and carried out a party instruction, one who may have had personal problems, family problems, but that was secondary. The first was the problem of the party, and he submitted himself to become a person who will solve for the party their problems and became a colonized Communist to carry out Communist work in a basic industry."

The witness told the committee of classes conducted by J. Peters, a national functionary for the Communist Party, for colonizing members of the Communist Party. They were composed of bright young men from colleges and universities who were convinced "that a so-called bourgeois education and diploma have no future; that there is a better future for a bright and alert and, at the same time, loyal and devoted young party person to go into basic industry and come up with the grassroots and, in the course of a few years, become the leader of a large segment of workers in basic industries." These young men, he said, had more faith in the ultimate victory of communism than in the survival of our own way of life.

Referring to his wide experience as a functionary in the Communist Party and his observations since leaving the party, Mr. Lautner testified that "the main slogan of the party is to get back into the mainstream of labor because they are out of the mainstream now, and the best way to get back into the mainstream of labor would be to colonize capable Communist organizers in the basic industries and to

build fires under the existing leadership to create dissension in the labor movement, cleavages around leadership, and to enhance the party position along these lines until they can come back again into power in segments of the American labor movement."

Following Mr. Lautner's testimony, Edward Yellin was confronted with his application for employment with U. S. Steel, which concealed information that he had attended the City College of New York and the University of Michigan. When asked whether it is not a fact that when he made application at U. S. Steel he was doing it under the direction of the Communist Party, Yellin refused to answer. He likewise refused to state whether or not it is true that colonization by young men is a deep-seated Communist plan in basic industry. Yellin refused to answer all questions relating to his place of residence prior to August 1957, his formal educational training, his record of employment, his membership in the Communist Party at the time of making his application for employment by U. S. Steel, and his membership in the Communist Party at other times, including the time of the taking of his testimony. In refusing to answer, the witness did not rely on the self-incrimination clause of the fifth amendment, but asserted a claim that he was not required to answer by reason of the provisions of the first amendment.

A third witness, Robert Lehrer, a graduate of Rutgers University and an employee in the steel industry in Gary, refused to answer questions relating to the colonization of the steel industry in Gary by bright young men, relying upon the first amendment as the ground for his refusal to answer. He likewise refused to answer any questions relating to his educational training, his record of employment, Communist Party activities within basic industry at Gary, and his own Communist Party affiliations. He also refused to state whether or not he had concealed facts relating to his educational training in making application for employment by Carnegie Steel.

Both Yellin and Lehrer were identified as leaders in Communist Party activities in Gary by Joseph E. LaFleur, who had been a member of the Communist Party at the behest of the Federal Bureau of Investigation. LaFleur, in the course of his testimony, identified 32 persons as having been known to him as members of the Communist Party in Gary, 12 of whom were heard as witnesses during the hearings. Of these, 8 refused to answer material questions relating to Communist Party activities within the steel industry, relying upon either the fifth amendment or the first amendment as grounds for their refusal to answer, and 2 admitted former Communist Party membership. The witnesses Willard Malis and Lazo Rebraca denied that they had ever been members of the Communist Party.

The testimony disclosed a pattern of colonization of the steel industry by young men with excellent training and education who came into the area from New York City and elsewhere. It was apparent that a hard core of the Communist Party is actively engaged in the rehabilitation of the Communist Party in the steel industry in Gary.

INVESTIGATION OF COMMUNIST INFILTRATION AND PROPAGANDA ACTIVITIES IN BASIC INDUSTRY
(Gary, Ind., Area)

MONDAY, FEBRUARY 10, 1958

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Gary, Ind.

PUBLIC HEARING

A subcommittee of the Committee on Un-American Activities met pursuant to call, at 10 a. m., in the council chamber, Municipal Building, Gary, Ind., Hon. Francis E. Walter (chairman of the committee) presiding.

Committee members present: Representatives Francis E. Walter, of Pennsylvania, and Gordon H. Scherer, of Ohio.

Staff members present: Frank S. Tavenner, Jr., counsel, and Raymond T. Collins, investigator.

The CHAIRMAN. The subcommittee will come to order.

Let the record show that, pursuant to law and the rules of this committee, I have appointed a subcommittee for the purpose of conducting these hearings composed of Representatives William M. Tuck, of Virginia; Gordon H. Scherer, of Ohio; and myself as chairman.

The order of appointment of the subcommittee will be set forth in the record at this point:

JANUARY 21, 1958.

To: Mr. Richard Arens
Staff Director
House Committee on Un-American Activities

Pursuant to the provisions of law and the rules of this Committee, I hereby appoint a subcommittee of the Committee on Un-American Activities, consisting of Representatives Gordon H. Scherer and William M. Tuck, associate members, and myself, Francis E. Walter, as Chairman, to conduct hearings in Gary, Indiana, on Monday and Tuesday, February 10th and 11th, 1958, at 10:00 a. m., on subjects under investigation by the Committee and take such testimony on said days or succeeding days, as it may deem necessary.

Please make this action a matter of Committee record.

If any member indicates his inability to serve, please notify me.

Given under by hand this 21st day of January, 1958.

[S] FRANCIS E. WALTER,
Chairman, Committee on Un-American Activities.

The CHAIRMAN. The subject and legislative purposes of this hearing are reflected by the following extract taken from the minutes of a meeting of the committee held on January 15, 1958:

A motion was made by Mr. Scherer, seconded by Mr. Willis and unanimously carried, approving and authorizing the holding of hearings in Gary, Indiana,

beginning on the 10th day of February, 1958, or on such other date as the Chairman of the Committee may determine, and continuing from day to day, and time to time, until the hearings are completed, and the conduct of investigations deemed reasonably necessary by the staff in preparation therefor, relating to the following subjects and having the legislative purposes indicated.

1. The extent, character, and objects of Communist infiltration and Communist Party propaganda activities in basic industry in the Gary, Indiana, area, the legislative purpose being to obtain additional information for use by the Committee in its consideration of Section 16 of H. R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and willfully becoming or remaining a member of the Communist Party with knowledge of the purpose or objective thereof, and for the additional legislative purpose of adding to the Committee's overall knowledge on the subject, so that Congress may be kept informed and thus prepared to enact remedial legislation in the national defense and for internal security when and if the exigencies of the situation require it.

2. Execution by administrative agencies concerned of Public Law 637, of the 83d Congress known as the "Communist Control Act of 1954," relating to the eligibility to exercise the rights and privileges provided under the National Labor Relations Act of labor organizations determined by the Subversive Activities Control Board to be Communist-infiltrated organizations. The legislative purpose is to assist Congress in appraising the administration of the Communist Control Act of 1954 and to enact such amendments thereto as the exigencies of the situation require.

3. Any other matter within the jurisdiction of the Committee which it or any subcommittee thereof, appointed to conduct this hearing, may designate.

Under the provisions of Public Law 601, 79th Congress, the Congress has placed upon this committee certain legislative and investigative duties and, in addition, the duty of exercising continuous watchfulness over the execution of any laws, the subject matter of which is within the jurisdiction of this committee. Accordingly, within the framework of this broad jurisdiction and objectives, this subcommittee of the Committee on Un-American Activities is here in Gary for the purpose of receiving testimony concerning Communist techniques and tactics of infiltration and the extent, character, and objects of Communist Party propaganda activities in basic industries. The importance of this area of inquiry from the standpoint of national security, cannot be overemphasized. Without this information, it would be impossible for the committee to carry out its legislative duties as required of it by the Congress.

In response to the mandate from the Congress to keep constant surveillance over existing security legislation, the committee is constantly surveying the operation of the Internal Security Act of 1950, the Foreign Agents Registration Act, the various espionage statutes, the Communist Control Act of 1954, and similar laws for the purpose of keeping Congress informed of the manner in which laws are being administered and for the purpose of recommending any needed legislative amendments. This mandate will be carried out at this hearing.

The committee recently formulated an Omnibus Security Bill, H. R. 9352, which represents the most comprehensive effort ever made to deal with all problems in the field of internal security. This bill combines numerous proposals for empowering the Government to combat the various aspects of the Communist conspiracy which are not dealt with adequately in our present laws. It is the hope of the committee that factual information obtained at this hearing will be of assistance in the consideration of the numerous provisions of this bill.

The committee is especially desirious of obtaining additional information for use in its consideration of Section 16 of H. R. 9352,

relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and willingly becoming or remaining a member of the Communist Party with knowledge of the purpose or objective thereof.

When investigating Communists and Communist activities, this committee frequently has been met with the false and unfounded charge that it is merely seeking headlines; that we are a group of Fascists; that we are engaged in witch-hunting; and the like. Such charges will not dissuade us from our duty. We seek the facts and only the facts. In the conduct of this hearing, we are not interested in any dispute between labor and management, between one union and another union, or with disputes within a union. We propose to ascertain the facts on Communist activity irrespective of the field in which it occurs.

In the course of the last several hearings of the Committee on Un-American Activities, we have discovered a new technique practiced by Communists for the purpose of disguising their operations. Persons who have been identified by responsible witnesses, under oath, as Communists have themselves denied present technical membership in the Communist Party for the period of time beginning with the announcement of committee hearings. Time and again we have seen instances in which hard-core leaders of the conspiracy deny, while they are under oath, that they are present members of the Communist Party, but refuse to testify respecting past membership as recent as a week or so prior to the hearings or with respect to their contemplated future courses of action. This situation, coupled with our other sources of information, compel us to conclude that they have merely practiced the ruse of resigning technical membership for the purpose of deceit. It is hoped that this pattern will not develop during the hearings here in Gary.

It is the standing rule of this committee that any person identified as a member of the Communist Party during the course of the committee hearings will be given an early opportunity to appear before this committee, if he desires, for the purpose of denying or explaining any testimony adversely affecting him.

I would remind those present that a disturbance of any kind or audible comment during the testimony, whether favorable or unfavorable to any witness or the committee, will not be tolerated. Any infraction of this rule will result in the offender being ejected from the hearing room.

I am particularly happy to be able to say that in this eternal struggle against international communism your own Representative in the Congress, Ray Madden, has made a great contribution in the work that he did with respect to the Katyn massacres. That was a monumental job, and placing the blame where it belongs was long overdue. Your Representative certainly made a very fine contribution by his efforts in that field.

Mr. Tavenner, will you call your first witness?

Mr. TAVENNER. Mr. John Lautner, will you come forward, please?

The CHAIRMAN. Mr. Lautner, will you raise your right hand, please?

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LAUTNER. I do.

The CHAIRMAN. Take a seat, please.

TESTIMONY OF JOHN LAUTNER

Mr. TAVENNER. Will you state your name, please?

Mr. LAUTNER. My name is John Lautner.

Mr. TAVENNER. Where do you live, Mr. Lautner?

Mr. LAUTNER. In Youngstown, Ohio.

Mr. TAVENNER. When and where were you born?

Mr. LAUTNER. I was born on the 1st of January, 1902, in Hungary.

Mr. TAVENNER. Are you a naturalized American citizen?

Mr. LAUTNER. I am.

Mr. TAVENNER. When and where were you naturalized?

Mr. LAUTNER. I was naturalized in Youngstown, Ohio, in Judge Lyons' Common Pleas Court in June 1926.

Mr. TAVENNER. Mr. Lautner, have you had experience of any kind in the Communist Party of the United States?

Mr. LAUTNER. I did.

Mr. TAVENNER. Were you a functionary of the Communist Party?

Mr. LAUTNER. Yes.

Mr. TAVENNER. Over what period of time?

Mr. LAUTNER. Over a period of time for about 20 years, from about 1930 to about 1950, and I wouldn't exclude the time I was in the Armed Forces during the war.

Mr. TAVENNER. What period of time was that?

Mr. LAUTNER. That was from November 1942 to June 1945.

Mr. TAVENNER. Will you tell the committee, please, what your principal positions have been within the Communist Party? I want the committee to have a general background of your experience.

Mr. LAUTNER. Well, I was a section organizer of the Communist Party in New York City for a number of years. I was a district organizer of the Communist Party for 5 years in West Virginia. I was on the Nationality Groups Commission of the Communist Party 1941 and 1942 and then again in 1945.

Mr. TAVENNER. Let me interrupt you there again a moment. You say you were on the Nationality Commission——

Mr. LAUTNER. That is correct.

Mr. TAVENNER. ——of the Communist Party.

Mr. LAUTNER. That is correct.

Mr. TAVENNER. Is that a nationwide organization?

Mr. LAUTNER. That is correct. It is a subcommittee of the National Committee of the Communist Party that specializes in carrying out Communist Party policies in the various nationality groups.

Mr. TAVENNER. Is that the highest authority within the Communist Party in that field?

Mr. LAUTNER. In that field, it is.

Then, I was a member of the National Review Commission of the Communist Party for a number of years.

Mr. TAVENNER. Just a moment. Tell the committee what is meant by the National Review Commission.

Mr. LAUTNER. The National Review Commisison is the disciplinary arm of the Communist Party. Its main function is to instill discipline and vigilance in the ranks of the party membership as to the carrying out of the party policies.

The CHAIRMAN. Since there is difficulty with the public address system, we will suspend for a few minutes.

(Brief recess.)

The CHAIRMAN. The committee will be in order.

Mr. TAVENNER. Now, Mr. Lautner, you did not finish. You were describing the function of the National Review Commission of which you were a member.

Will you continue?

Mr. LAUTNER. That is right. I got as far as guiding the party to instill discipline and vigilance in the ranks of the Communist Party and to process disciplinary cases that were rendered in the lower organizations of the party and make disciplinary decisions and recommendations pertaining to these cases.

Mr. TAVENNER. Was this the highest authority in the United States within the Communist Party within this field?

Mr. LAUTNER. Subject to approval of our decisions by the National Secretariat, it was the highest authority on discipline. In addition to that, I was chairman of this Review Commission in New York State in 1947, '48 and '49, up to the time I left the Communist Party in 1950.

In addition to that, also I taught numerous classes in the Communist Party on Marxism, Leninism, on political economy, on party organization and party structure, and in return I was a student in two national training schools in the Communist Party.

Mr. TAVENNER. What were those national training schools?

Mr. LAUTNER. The national training schools were a selected group of Communist functionaries, high functionaries who were brought together and were assigned to study for a number of months Marxism, Leninism, and all the related problems to Marxism and Leninism.

Mr. TAVENNER. You say that you left the Communist Party in 1950?

Mr. LAUTNER. That is correct.

Mr. TAVENNER. Have you been connected with it in any way since that time?

Mr. LAUTNER. No.

Mr. TAVENNER. I think the committee should understand the circumstances under which you left the Communist Party.

Mr. LAUTNER. Well, I left the Communist Party involuntarily on the 17th of January, 1950. I picked up the Daily Worker and I saw my picture and an expulsion notice in the Daily Worker at that time.

Prior to that I was subjected to indignities and torture, if you please, five hundred miles away from where I resided by Communist Party functionaries.

Mr. SCHERER. You were subjected to——

Mr. LAUTNER. Indignities and torture and unfounded accusations.

Mr. SCHERER. Will you describe those indignities and tortures and the circumstances.

Mr. LAUTNER. Yes. In late December 1949, I was approached to make an application for a passport that I am invited to Hungary as a guest of the Hungarian Communist Party.

Mr. TAVENNER. May I interrupt you there?

Did you hold any position in this country in a language group at that time?

Mr. LAUTNER. At that time, no. I was a member of the National Review Commission of the Communist Party and chairman of the New York State Review Commission.

Needless to say, I didn't get my passport because, the explanation was by Mrs. Shipley, due to the Vogeler case with Hungary at that time, there was a strained diplomatic relationship between the two countries and they did not advise any American citizen to go to Hungary at that time. So I was turned down.

I reported this to the party. Well, I was told to forget about it. A few weeks later, I was approached again to go to Cleveland, Ohio, on an assignment, to meet the person who was in charge in the Midwest to prepare the party to go underground; and I was going to have some conferences with him to help him accelerate his work and bring it up to the same level that we had it in New York at the time.

Instead of meeting that person in Cleveland, Ohio, I found myself in a cellar with three thugs that I never saw in my life before. They stripped me naked, completely, even I had to take my socks off, and they began to—well, they were knocking the wall with rubber hoses, they had butcher knives, and they had revolvers. As this was going on, 3 high functionaries of the Communist Party came down in the cellar, Joe Brandt, Saul Wellman, and Jack Kling, the national treasurer of the Communist Party; and they rigged up a recording machine and they started to interrogate me about my connections with the Government, with the FBI, and with the CIA. I didn't even know at that time what the CIA was. And I protested my innocence, and the more I protested, the angrier they got. I was interrogated for a number of hours and finally, through my own resourcefulness, I convinced them that it wouldn't be profitable for them to do away with me at that time.

I was told to resume the hearing next day—the so-called hearing. I was given my clothes back. They searched them thoroughly. I never saw them after that, and this was on the 14th of January in Cleveland.

On the 17th of January I was back in New York. I picked up the Daily Worker and there I was accused of being an enemy agent of long standing in the Communist Party. And that was the end of my membership in the Communist Party.

Mr. TAVENNER. Were you at that time a representative of the Federal Bureau of Investigation or any other Government agency?

Mr. LAUTNER. No; I was not.

Mr. TAVENNER. What was the basis of this charge that was made against you?

Mr. LAUTNER. During the war I was in Psychological Warfare. I was sent to Camp Ritchie. I went through the Military Intelligence Training School there, the War Department Military Training School. After graduation I was assigned, solely on my ability, as a linguist and knowing journalism and propaganda. I was assigned to Eisenhower's headquarters in Algiers.

Mr. SCHERER. Were you a member of the Communist Party at that time?

Mr. LAUTNER. Technically I was not because there was a party decision at that time that all those members who are inducted in the Army are automatically released from party membership. The reason is given that they could not carry out the primary obligations, the most elementary obligations of a party member, that is, to attend

meetings and pay dues. So we were released from the party for the duration.

Mr. SCHERER. You actually were a Communist, though?

Mr. LAUTNER. Yes. But technically I was not a party member I was assigned to Eisenhower's headquarters. I was assigned to establish a monitor team to monitor enemy radio stations in Algiers; and later on we were transferred to a field unit out in Italy, known as the Balkan Team of AFHQ, Allied Forces Headquarters, to monitor all enemy stations there and to make daily reports. And in addition to that I was also assigned to write script, and for over a year I was also on the radio in Bari, Italy, speaking towards Hungary at that time.

Now, in my unit, there was a person who was a Spanish veteran, who joined the British Army, and he was assigned to my unit. I was told to take care of him. In the course of our work I got acquainted with him, and it was a situation where we at the same time had to build up a news service and a monitoring system for the Yugoslavs in 1943 and '44 in Bari, Italy. In the course of our work we got acquainted with a lot of Yugoslavs, too, and everybody was introducing everybody to everybody.

In 1949, this person appeared in a trial in Hungary. At that trial a number of high officials of the Communist Government, like Laszlo Rajk and others were accused of being Tito agents. This fellow was one of the witnesses against Rajk and the others who were hanged by the Communist Government and shot by the Communist Government.

My name was mentioned, and he said that I was the one who introduced him to Tito agents during the war in Bari, Italy.

Well, in 1944, '43 and '45 there was no issue of Titoism. It just didn't exist. However, I was implicated in the Rajk trial in '49 and the international leadership, whether it was Rakosi or others, in Moscow, sent instructions to this party to get rid of me and get rid of me fast.

That is where my predicament started with this party over here, and I know it was done by this party reluctantly, because I was involved in very sensitive work in 1948 and 1949 in this country.

Mr. TAVENNER. That was Communist Party work?

Mr. LAUTNER. Communist Party work. I was in charge of building the horizontal features of the underground in New York State. And I would not be entrusted by the Communists with that sort of a function if they had any suspicions about my loyalty to the party.

So that is the situation of my expulsion.

Mr. TAVENNER. After that word came down from Moscow to get rid of you, was it then that you were told to go to Hungary?

Mr. LAUTNER. First, to Hungary, and that didn't work out; and I was told to go to Cleveland, and that didn't work out, because—the way I reflect today—the person who was in charge of that wrecking crew, Jack Kling, he got yellow, he was afraid.

Mr. TAVENNER. Mr. Lautner, in view of the splendid work that you have exhibited in fighting communism since 1950, we are very glad indeed that your application for a passport to Hungary was denied.

Mr. Lautner, the principal purpose of the hearing in Gary is to receive testimony relating to the techniques and strategy of the Com-

munist Party within basic industry and to ascertain the extent, character, and objects of Communist Party activities within that field:

The committee would like to hear from you, if you know from your own experience over a 20-year period in the Communist Party, the principal purposes of the Communist Party in basic industry.

Mr. LAUTNER. Yes. Well, first, on the basis of my experiences, let me say that the Communist Party, in the course of my membership in it, was interested in all phases of human relationships in this country. The reason for that was to make headway in every strata of our society and our population over here. But in this effort, they always kept in the forefront the fundamental aims and objectives of the Communist Party in all of their activities in this country; and that fundamental aim and objective was to bring about a change, a fundamental change, in the social relationship of forces in this country, in society, to bring that fundamental change in society, in its political aspects, in its economic aspects, and in its social aspects; commonly, it is called bring about socialism in this country.

Now, in the course of years, in classes and in indoctrination courses, it was made clear that members of a Marxist-Leninist Party cannot dream or wish to bring about this change peacefully. Those that speak about peaceful achievement or peaceful transition into socialism have nothing in common with Marxism-Leninism. They are reformists and they are enemies and traitors of the working class. You can only bring about this change by force, because the United States is a very powerful monopoly, a capitalistic country who will not readily hand over their predatory power on a platter to the Communist Party or to any group in this country.

If that is so, therefore, the Communist Party must win, first of all, the decisive section of the working class on its side.

Now, where are the decisive sections of the working class? In the basic industries, such as mining, steel, metal, auto, packing, railroad, transportation—these are the industries on which the Communist Party must concentrate all its efforts, its talent, money, everything, to win these sections, first of all, over to the cause of Marxism and Leninism.

And I recall way back in 1932, when a turn was made in that direction after a long drawn-out factional fight and a relative stabilization set in, in the party under the leadership of Browder when he came into power, an open letter was issued to the Communist Party: "Face to the Shop." "Face to the Shop"; the slogan at that time was that we must begin to concentrate on basic industry, in basic industry, to basic factories and shops. Each has a reputation in a given community as to the way they go. The whole community thinks around them and revolves around them, and they drag the whole community around with them. In basic factories, concentration on basic departments, key departments; in key departments, to concentrate on key people; and shop units began to be built in many, many industrial regions in the country.

In steel, three districts were picked out for concentration in the early days. The Calumet region was one of them. Youngstown, Ohio, was another one. Pittsburgh and the whole Allegheny-Monongahela Valley, Susquehanna Valley, and the Allentown region with its steel industries was another.

So the slogan was practically imprinted on everyone in the Communist Party, particularly functionaries—key industry, key shop, key department, key people.

Well, that effort revolved around building the so-called revolutionary industrial unions in those days.

Mr. TAVENNER. They were called the Red unions, were they not?

Mr. LAUTNER. The Red unions, because they were affiliated with the Trade Union League, with the Profintern, which had its headquarters in Moscow. Foster was chairman of the Trade Union Unity League in this country at that time.

A whole crew of so-called skeleton unions were built up in this country during those days, like the Steel and Metal Workers Industrial Union, the Auto Workers Industrial Union, the Textile Workers Industrial Union, and the Transportation Workers Industrial Union, and a whole chain of unions like that. They didn't gain much foothold but had skeleton organizations in every industry in the country.

Mr. TAVENNER. May I interrupt you there?

Was one of the reasons, or the greatest reason, for the failure of the Communists in that undertaking the fact that the Communists found that they could not sell communism to the rank and file of labor when they used the Communist label to do it?

Mr. LAUTNER. It is correct in a respect. You see at that time we had the American Federation of Labor, organized labor was about three and one-half millions; but you had most of the basic industries, like steel, unorganized yet. The AFL had some segments in it, like the machinists and what not. But still, with all these subjective possibilities, the Communist Party could not make much headway in organizing in these basic industries.

Then a favorable turn came about in 1936. In 1936, first a Committee for Industrial Organization was formed that finally held its first convention in Pittsburgh as the Congress of Industrial Organizations; and all these skeleton organizations in the basic industries controlled by the Communist Party at that time went into the CIO, hook, line and sinker; and they gained a lot of strength in there, so that, in the course of years, they built up 13 international unions and had influence over approximately one-third of the CIO movement at that particular time.

Now, at that time I recall industrial conferences that were held. Those in the party were called to national committee meetings. I attended national committee meetings in 1936, 1937, 1938, 1939, 1940, and 1941. The key argument was always, "We are topheavy with Communist functionaries in trade union leadership and there is no bottom to it. There is no party organization in the bottom of these trade unions in these industries where the so-called party-controlled unions are operating."

Mr. TAVENNER. They did not have a sufficient ground root organization?

Mr. LAUTNER. That is right. The workers were much more practical. They didn't join.

Came the war and the party was still enjoying the support or decisive influence in the 13 unions; and after the war, a change, a switch took place.

The CIO leadership began to feel that this leadership in these 13 international unions affiliated with the Congress of Industrial Organizations was much more interested in carrying out and projecting a foreign policy that was just the opposite of the foreign policy of the United States, the Marshall Plan, the Truman Doctrine; and there came a time when the CIO leadership began to expel in toto all these unions from the Congress of Industrial Organizations. So that by 1947 the clashes began to develop, and by 1949 all these unions were expelled.

Mr. TAVENNER. Give us the names of a few of those unions.

Mr. LAUTNER. The United Electrical Workers Union, the Mine, Mill and Smelter Workers Union; the United Public Workers Union; the West Coast Longshore Union, and the Furriers Union. Thirteen of these international unions were expelled from the CIO.

So, here was a situation where many, many trade union leaders in these expelled unions began to take issue with the party leadership about the type of policies they were forced to pursue for the Communist Party in the trade union movements, and began to break away from the Communist Party and its influence. Mike Quill was one of them in the Transport Workers Union who made that break in the 1948 Presidential campaign.

Now, it is very interesting to see the practical maneuvering that went on inside the party projected by the so-called trade union specialists, Johnny Williamson and the others.

Mr. TAVENNER. Johnny Williamson was a defendant in the first Smith Act case?

Mr. LAUTNER. That is right. Johnny Williamson was the Labor Secretary of the Communist Party in this period.

We were accused at that time by Philip Murray that we were interfering in the internal problems of the CIO. Johnny Williamson called a meeting in New York of all the section organizers of the Communist Party who were in charge of infiltrating and influencing policies in the labor unions and projecting Communist policy in the labor union; and he came and gave a report to these industrial section organizers and said: "It is the considered judgment and the decision of the National Committee that we are not interfering in the internal problems of the unions."

He is telling that to the leaders of the party who are day to day interfering in the internal problems of the union. That is the kind of a tactical maneuvering that was going on at that time.

Now, I want to come up to 1945 when the Communist Party was reconstituted and Browder's revisionist policies were condemned and we went back to Marxism, Leninism, to the classics. Browder was accused that he tried to revise, to subvert, to reform, and to go away from, the basic principles of Marxism and Leninism. He was expelled. After the reconstitution, the party developed a three-prong program. First, to re-educate the party membership in Marxism and Leninism. The bulk of the party membership came in under Browder's leadership. Evidently there was a feeling that Browder still had a lot of influence over the party membership. Therefore, there

was a need for the re-education in Marxism and Leninism of the party membership.

The second prong was the reorganization of the Communist Party. The party was reconstituted in the South. The party established 32 districts, and the party began to streamline its organization on the basic levels, in the branches and sections, in order to make the party more mobile, in order to put the party leadership in a position where they can better supervise and give leadership in the day-to-day activities to the party membership, so that they can check up on everyone's activity who is a member of the party.

And the third phase of it was to reestablish again a concentration policy in basic industries.

Well, I took part as a party functionary in all 3 phases, all 3 aspects of the work on one level or the other.

But here I would like to point out that in preparation for the 1948 convention the party called industrial conferences; such industrial conferences were held in the Midwest here. I took part in the Eastern Seaboard conference in 1947 to make a survey of how far the party had developed its reorganization and to what extent did the party already begin to do concentration work. And at this Eastern Seaboard conference, also plans were laid for further acceleration of this program so that, by the 1948 convention when the delegates come to the party convention, they can report some experiences along these lines and can show some achievements along these lines.

In this period also a policy of colonization began. I want to make it clear over here that the party always had an eye on all these activities to bring about the realization of its final objectives, a complete fundamental change in our society, to gain control and to usher in socialism in our society.

Mr. FAVENNER. And how important was basic industry in the accomplishment of that object?

Mr. LAUTNER. The basic industries contained the decisive sections of the working class, without which the Communist Party cannot realize its fundamental objective.

Colonizers even were sent to this region. I know from my own personal experience two of those who were sent over here in that period of time. One was Joe Chandler, who just got back from the Army and was waiting for a reassignment and was reassigned to Gary, Ind., as a steel colonizer to build the party in the steel industry over here. Prior to that, his last assignment was that he was a section organizer in aluminum in the New Kensington Section of the Pittsburgh District of the Communist Party.

The other person who was reassigned was George Powers. George Powers was an old-time party functionary. In the 1930's when the party forces all went into the CIO, he was on the Steelworkers Organizing Committee and he worked around Ashland, Ky. There is a steel mill over there. He was assigned by the Steelworkers Organizing Committee to work around there. In 1946 and '47 he was the top party industrial organizer in New York on longshore. He was the party coordinator of Communist activities in the longshore industry. In 1947 he was sent down to the Calumet region as the party coordinator in steel, and by the 1948 convention he came to the New

York convention as a native Indianian who was working for the party in the Calumet region at that time.

Mr. TAVENNER. These were specially trained persons selected for the particular work to be done in the Gary area?

Mr. LAUTNER. That is correct.

Mr. TAVENNER. Do you know whether or not they used their real names here in Indiana or whether they operated under assumed names?

Mr. LAUTNER. I would not know. I assume that George Powers wouldn't use his real name.

Mr. TAVENNER. Would or would not?

Mr. LAUTNER. Would not.

Mr. SCHERER. For the purpose of the record, we all know Calumet is part of the Gary area.

Mr. LAUTNER. Yes. Indiana Harbor, Hammond, the South Chicago area, and this steel area.

Mr. SCHERER. How far is Calumet from Gary?

Mr. LAUTNER. The whole region is called the Calumet region.

Along these lines, other organizers were sent to other parts of the country to do the same type of party activity, to coordinate party work in the basic industries.

Now, in this period of time, the concentration policy of the party was in the forefront in all party activities. I know I myself was assigned in 1947 to go down to the New York waterfront. In New York there is no steel mill and there are no mines, but New York has also a basic key industry and that is transport.

New York has a shed over there, a teamsters' shed, one of the most powerful in the country. New York has docks, New York has railway centers. Chelsea was the region that was assigned to me to reorganize; and I was working for weeks to only make a survey as to the physical location of places—where are the teamster sheds; where do the American Railway Express workers hang out; where do the Pennsylvania Railroad workers hang out; where do the New York Central West Side Terminal workers hang out; where do the teamsters hang out; where do the longshoremen hang out? I made a survey on all these things.

Then we had to organize on the waterfront. We had the industrial sections already that worked in these specific industries as Communists, but we had to reassign Communist Party members in the community branches to implement, to help along those party members that were in the industry already, for leaflet distributions, 5 o'clock in the morning at shape-ups on the waterfront, to visit the homes of longshoremen and seamen, to visit the homes of Yugoslav stevedores, to visit the homes of railway workers and railway express workers, and to implement the industrial activities of the Communist Party industrial branches with concentration branches from the outside in the same direction.

Mr. TAVENNER. In other words, an important part of this plan of infiltration into basic industry included the organization of the families of the workers.

Mr. LAUTNER. That is correct, so that when the worker came home from his place of work and he will listen to his wife, his wife will tell him about the high cost of living and bad apartments and raise issues along these lines, where he heard the same thing on the water-

front from a different source, so there is a mutual understanding on problems, where they understand each other and become closer knit, closer allied with the Communist Party and its campaigns. I mean it was that type of a concentration activity that was projected along the waterfront in transportation.

By 1948, when the convention came along, Henry Winston, the organizational director of the Communist Party——

Mr. TAVENNER. He was also convicted in the first Smith Act case, was he not?

Mr. LAUTNER. That is correct—gave a report and in his report he also spoke on the organization of the party and the projection of its concentration policy; and in his report he stated that the reorganization already resulted in establishing over 3,000 Communist Party branches throughout the country, a whole slew of industrial sections, and between 400 and 500 industrial branches were established by the 1948 convention.

Again here I want to make it clear that the reason for this frantic effort on the part of the Communist Party after 1945 was to regain that foothold that it was beginning to lose because of the expulsion by the CIO of leadership of the Communist activity and disruption within the ranks of organized labor.

Now, after the 1948 convention, another organized effort was done in this direction. J. Peters, who was a national functionary at that time, organized a number of classes for colonizing party members.

Well, the classes were held in the board room of the New York State organization of the Communist Party, and my office doors were just 2 doors away, and I know Peters very closely, and I had a number of discussions with him, and I watched him work on his curriculum, on his material for presentation.

Now, these party members came in the main from colleges and universities.

Mr. TAVENNER. Young men?

Mr. LAUTNER. Young men. They were convinced that a so-called bourgeois education and diploma have no future; that there is a better future for a bright and alert and, at the same time, loyal and devoted young party person to go into basic industry and come up with the grassroots and, in the course of a few years, become the leader of a large segment of workers in basic industries.

Mr. TAVENNER. In other words, such individuals had to have more faith in the ultimate victory of communism than in the victory of our own way of life.

Mr. LAUTNER. That is correct. And unfortunately a lot of these boys fell for this line, and I know of two classes that were held in the board room in the spring of 1949. These boys, after graduation, uprooted themselves, and they became professional revolutionaries. A professional revolutionary is one who is loyal and devoted to the Communist cause, to the Communist Party, who goes wherever and whenever the party sends them to go, to whom——

Mr. SCHERER. Pardon me just a m[illegible].

They became colonizers in industry, [illegible]hey not? Many of them?

Mr. LAUTNER. That is right.

Mr. SCHERER. Would you tell us, for the purpose of the record, what is a colonizer?

Mr. LAUTNER. A colonized Communist is one who is a professional revolutionary, who has uprooted himself from his home environment and carried out a party instruction, one who may have had personal problems, family problems, but that was secondary. The first was the problem of the party, and he submitted himself to become a person who will solve for the party their problems and became a colonized Communist to carry out Communist work in a basic industry.

Mr. SCHERER. Many times were they not individuals who had a college education, perhaps one or more degrees? They would leave, say, New York City, and go to Detroit and, in filing an application for a job with a large industry, they would represent their educational attainments to be that only of a grade school student?

Mr. LAUTNER. Yes.

Mr. SCHERER. And thus gain a position on the assembly line?

Mr. LAUTNER. That is correct. They were following Lenin in "'Left Wing' Communism: An Infantile Disorder," in which he chides some of the mistakes of party leadership on the question of trade union policies. I think in this instance it was the German party. Lenin said:

> It is necessary to be able to withstand all this, to agree to any and every sacrifice, and even—if need be—to resort to all sorts of devices, manoeuvres, and illegal methods, to evasion and subterfuge, in order to penetrate into the trade unions, to remain in them, and to carry on Communist work in them at all costs.

This is the underlying principle on the basis of which these people will deny their name, will deny their education, will deny everything, because that denial furthers the aims and objectives of the Communist Party. It would be a liability for him to be a worker in the mill if he has a college degree; it wouldn't look good. There would be immediately a suspicion of an ulterior motive in that, so they are carrying out a Leninist policy when they do that.

Mr. SCHERER. They did have ulterior motives in concealing their educational qualifications. They misrepresented their backgrounds to gain a place on the assembly line, in order to be better able to indoctrinate others on that line.

Mr. LAUTNER. That is correct.

Mr. SCHERER. Was that the purpose?

Mr. LAUTNER. That was the purpose. And it doesn't necessarily involve only college graduates. It involves also long-standing party leaders, party functionaries who at one point are reassigned. Today he is an organizer of the Communist Party in the Bronx, and 2 weeks later, under a different name and with a different social-security card, he is working in an aircraft plant near Buffalo, near Niagara Falls, or working in the steel mills or working in an automobile plant up in Flint, Mich.

Mr. TAVENNER. Yes. I should remind the subcommittee that we received a considerable amount of evidence at Flint, Mich., of probably 8 or 10 instances of colonization of the exact type that you described.

The CHAIRMAN. I think the most dramatic case that I can conceive of was in North Carolina where college graduates were working in the fish industry scaling fish.

Mr. LAUTNER. That is correct.

The CHAIRMAN. Ph. D.'s and so on.

Mr. LAUTNER. That is correct.

Mr. TAVENNER. And also the incident of Colorado University, where the Communist Party leaders induced young men to leave in the midst of their educations and take positions in industry for the same purposes.

Mr. SCHERER. The tragedy of it is that the men who were working with them on the assembly line didn't know they had gotten their position by subterfuge.

Mr. LAUTNER. Well, the college boys, members of the Communist Party, were carrying out a Leninist line by denying their identity and using subterfuge.

Mr. TAVENNER. You told us about this class or several classes that were conducted by J. Peters, training young men in the universities to go out and engage in colonization in industry. I think we ought to know a little more about J. Peters so that we can better understand the training that he was giving these young men.

Mr. LAUTNER. J. Peters, I first knew him in 1929, at the time I joined the Communist Party. We were in the same unit in New York at that time. And at that time J. Peters was the business manager of the Daily Worker that moved from Chicago to New York and was housed at Union Square in the party building. In the course of time, J. Peters became the district organizational secretary of the New York District of the Communist Party. Later on he went to the Soviet Union. He was in the Soviet Union for a number of years. When he came back, he became a national functionary for the Communist Party. And in the late 1930's he was in charge of the Communist Party, for the national leadership of the Washington Party. There were two parties in Washington, D. C. One was the open party, operating with, I think, Chauncey as the district organizer or District of Columbia organizer of the party, and J. Peters was the organizer of the party within the Government apparatus.

Mr. TAVENNER. Which obtained secret information from Government employees for the benefit of the Soviet Union?

Mr. LAUTNER. I read about it in the newspaper. I read a lot about that. I had no first-hand or personal knowledge of that. All I know was he was in charge of that.

Mr. TAVENNER. Mr. Chairman, this is a good place for the morning recess.

The CHAIRMAN. The committee will stand in recess for five minutes.

(Brief recess.)

The CHAIRMAN. The committee will be in order.

Please proceed, Mr. Tavenner.

Mr. TAVENNER. Mr. Lautner, you have told us why basic industry was of great importance to the Communist Party, and you have told us of the objectives of the Communist Party within basic industry. Will you now tell us some of the tactics or methods used by the Communist Party in strengthening itself within basic industry.

Mr. LAUTNER. Well, the tactics varied from time to time. As I described, in the earlier days building industrial unions, revolutionary industrial unions; tactics were different in the time when the party had its so-called honeymoon in the CIO. The tactics varied around 1947–48, when these big unions in the CIO were being ousted. Here I would like to just point out one specific tactic that the party employed at that time. There was a law enacted known as the Taft-Hartley law. Now, when this law was being applied, the Communist

Party position was not to comply with the law; but this position was also the position of a number of other labor leaders who were not Communists. They had to sign loyalty forms in order to enable them to take cases to the National Labor Relations Board. But this tactic by the party wasn't fruitful so at one point the party had to change from noncompliance to compliance.

I personally know that in 1949, for example, there were Communist Party leaders, even members of the Central Committee who were long standing in Communist Party leadership and at the same time trade union leaders, and they publicly resigned—I would put this "resign" in quotation marks—from the Communist Party in order to enable that union to petition the National Labor Relations Board and to hear cases.

Other less-known Communist Party trade union leaders were told to send in a registered letter to the Communist Party, with a return address, and get hold of a registration slip that such letter was sent, to keep that registration coupon, and they should sign Taft-Hartley affidavits that they are not members of the Communist Party.

Now, with these envelopes when they came in they were instructed to put a blank sheet of paper in the registered letter, and we can always have as documentary evidence a registered letter by the United States postal offices that this person, on such-and-such a date, sent a letter to the Communist Party and you can always put in a letter of registration which is legally accepted documentary proof that they resigned from the Communist Party.

That was from noncompliance to compliance. These were some of the tactics which were used in relation to the Taft-Hartley law.

In 1949, the work of the party in carrying out concentration work in the basic industries was accelerated, and results were shown to the extent that the Communist Party was in a position to publish or produce an outline on industrial concentration. That outline already related some of the basic principles, Leninist principles, the need and necessity of an industrial concentration.

It also gives in the outline some examples of fruitful work, of positive achievements along this line; and this work served as a basis for further accelerating industrial concentration work in the ranks of the Communist Party.

I also would like to mention that in 1948—beginning around September 1948—the party was making preparations to go underground to enable the party, in the face of the political climate that existed at that time, to function as an organized force under any and all conditions.

Now, on the question of integration into the underground, into the "three" system, primary consideration was given, first to the absolute loyalty and devotion of the party member who was to be integrated into this organization; secondly, that he works in a trade union or has influence in the trade union where, as a concealed Communist, he will have enough elbow room to operate by concealing his Communist Party membership and, at the same time, do Communist work.

Now, since I left the Communist Party—even in 1949—there was a discussion that began, and since I am out of the party I followed very closely all Communist periodicals: The main slogan of the party is to get back into the mainstream of labor because they are out

of the mainstream now, and the best way to get back into the mainstream of labor would be to colonize capable Communist organizers in the basic industries and to build fires under the existing leadership to create dissension in the labor movement, cleavages around leadership, and to enhance the party position along these lines until they can come back again into power in segments of the American labor movement.

Mr. TAVENNER. Then, if I understand you correctly, based upon your vast experience in the party as a functionary and the study that you have given the problem through Communist periodicals since you got out of the party, you are prepared to say that today the Communist Party is making an all-out effort in the field of basic industry?

Mr. LAUTNER. That is correct; with their shrunken forces every effort is turned in that direction, to get back into the mainstream of labor.

The CHAIRMAN. Let me see if I understand you. You said they are building fires. By that do you mean the discrediting of the present leaders in labor unions?

Mr. LAUTNER. That is correct, Congressman. That is correct.

The CHAIRMAN. So that it is a Communist tactic to discredit the present leadership with the hope that dissension will be created and that more friendly people will be selected for leadership positions.

Mr. LAUTNER. That is right, that will tolerate, under the aegis of civil liberties and freedom of speech, Communist activities in the labor movement again.

The CHAIRMAN. But all the while the real objective and the identities of these people are concealed.

Mr. LAUTNER. That is correct.

The CHAIRMAN. I think it is a great tribute to the patriotism and loyalty and the appreciation of what our institutions mean to the ordinary common worker that deception has to be practiced in order to get a foothold.

Mr. LAUTNER. That is right. But may I say this, Congressman. It was my experience as a Communist organizer for 20 years, and since I am out of the party 8 years I begin to see that the American worker is a worker that has a lot of common sense. He will not swallow a sugar-coated pill, he will not swallow communism.

The CHAIRMAN. I wish all of the workers could have seen the lot of the workers in Yugoslavia, as I did not too many months ago. I am sure then that the dwindling membership would become practically nil overnight.

Excuse me. Go ahead.

Mr. LAUTNER. May I make just one more comment?

Even behind the Iron Curtain the workers somehow do not swallow this pill. Hungary somehow is a classic example. The workers revolted against the tyranny of the Communist Rakosi regime over there, and they learned one thing. They used against the Communist hierarchy and the Communist bureaucrats the same tactics that they learned from the Communists. They established workers' councils to fight the Communist leadership in Hungary. And wherever there is a little chance given behind the Iron Curtain for workers to assert their thinking and their rights, if that chance is given, well, you see the results of it.

The CHAIRMAN. They are seeking the chance only because they permitted infiltration.

Mr. LAUTNER. That is right.

The CHAIRMAN. That is one of the things Congress had in mind when it imposed upon this committee the very distasteful, very disagreeable task that we have; and it is very significant, I think, that when we just received our appropriation several weeks ago, despite what leftwing press segments have reported, there were scattered votes against the committee, there were 2 votes against the appropriation, 2 in the whole Congress. The vote was twice as strong as it was last year when there was only 1 vote against it.

Mr. TAVENNER. Now, you mentioned the question of bringing pressure to bear on leadership in the union through Communist plans. Was there a time when anyone from this area at a labor convention endeavored to speak out in behalf of communism against the leadership in labor?

Mr. LAUTNER. Yes. Well, the only incident that I can recall from this area was at the 1948 convention of the Communist Party, when one of the local Communists over here was put on the presiding committee of the 1948 convention. He was highly praised for the bravery and fortitude and the position that he took in carrying out his party assignment at the Boston convention of the United Steelworkers of America. And if I recall, the name of that person was Nick Migas.

The CHAIRMAN. How do you spell it?

Mr. TAVENNER. Do you know how to spell it?

Mr. LAUTNER. M-i-g-a-s, I think. He was from Gary, Ind. He was a local official. He was a delegate to the Boston convention and he fought Philip Murray openly on the floor against the Marshall Plan and the Truman Doctrine, carrying out the party line at that convention.

Mr. TAVENNER. So he was rewarded for that.

Mr. LAUTNER. In the 1948 National Convention of the Communist Party when he was put on the presidium and highly praised by Eugene Dennis, William Z. Foster, and Henry Winston.

Mr. TAVENNER. Were you at one time assigned to any special work within a language group?

Mr. LAUTNER. Yes. I was on the Nationality Groups Commission of the Communist Party in 1941 and 1942 and also in 1945 and 1946 and, specifically, I was National Secretary of the Hungarian National Bureau of the Communist Party.

Mr. TAVENNER. Now, in what way—or let me put it this way—did the Communist Party consider that foreign-language groups were of importance in connection with basic industry?

Mr. LAUTNER. That is correct. The party paid a lot of attention to nationality-group work because it is a fact that in basic industries you have a lot of nationality groups. You have Hungarians, Polish, Ukrainians, Rumanians, and what-have-you, that work in basic industries. They don't read the Daily Worker. Even the party groups in these nationality groups don't read the Daily Worker because they have difficulties in reading English. So the language bureaus of the Communist Party have newspapers like the Hungarians had the Hungarian Daily Journal, and various other nationality-group papers.

Now, these papers get into a lot of places where the Daily Worker or Sunday Worker could not get in; and these papers also reflect the party line, the party tactical line, and the party thinking and help the party in penetrating these various national groups who are employed in big industrial areas and basic industries.

Mr. SCHERER. For the record, we all know that the committee's hearings last year disclosed that at this moment there are 9,000,000 pieces of Communist propaganda coming into this country each year through the United States mails, much of it in foreign languages.

Mr. LAUTNER. From behind the Iron Curtain.

Mr. SCHERER. That is right.

Mr. LAUTNER. But in addition to that, there are local Communist language-papers in various languages. I remember in that hearing one of the Chicago language-papers had a circulation of 20,000. Now that paper, with a circulation of 20,000, propagating the Communist Party line gets into a lot of places, in the main, in the Chicago area. I think it was the Lithuanian paper. I think that is what it was, the Lithuanian paper in Chicago.

Mr. SCHERER. I am talking about propaganda coming in yesterday, today, and tomorrow.

Mr. LAUTNER. And every day, that is correct.

Mr. SCHERER. Not two years ago or three years ago or five years ago.

Mr. LAUTNER. That is correct.

Mr. TAVENNER. Did you attend the last national convention of the Communist Party or were you an observer there?

Mr. LAUTNER. I was not. I read about it. They had the proceedings out of the Sixteenth National Convention. I followed that preconvention discussion in the Daily Worker and in the Worker, but I was not a member of the Communist Party. The last convention that I attended was in 1948.

Mr. TAVENNER. Now, did anything occur at that convention that you can recall which would demonstrate a special interest of the Communist Party in basic industry?

Mr. LAUTNER. You mean at this last convention?

Mr. TAVENNER. Yes.

Mr. LAUTNER. In 1956?

Mr. TAVENNER. Yes.

Mr. LAUTNER. Well, the party registered its sectarian policies of the past and concurred with the slogan raised in the last few years—that the primary problem of the party is to get back into the mainstream of labor; in order to accelerate this work to move its headquarters from New York to Chicago. Whether they move to Chicago I wouldn't know. I still see that they are hanging around New York. But that was made a decision to move their national headquarters to Chicago.

Mr. TAVENNER. To get closer to the basic industries?

Mr. LAUTNER. To the basic industries in the heart of America; that is right.

Mr. TAVENNER. I believe, Mr. Lautner, that concludes my questioning of you.

The CHAIRMAN. Mr. Lautner, I express the appreciation not only of those who were fortunate enough to hear you but our committee and the membership of the House. You have made a great contribution in this struggle. For that the American people are indebted to you.

Mr. LAUTNER. Thank you very much, Congressman.

The CHAIRMAN. Will you call your next witness?

Mr. TAVENNER. Mr. Edward Yellin, will you come forward, please?

The CHAIRMAN. Will you raise your right hand?

Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. YELLIN. I do.

The CHAIRMAN. All right, Mr. Tavenner.

Mr. TAVENNER. Have a seat please.

TESTIMONY OF EDWARD YELLIN, ACCOMPANIED BY COUNSEL, VICTOR RABINOWITZ

Mr. TAVENNER. Will you state your name please, sir.

Mr. YELLIN. Edward Yellin.

Mr. TAVENNER. Will counsel accompanying the witness please identify himself for the record?

Mr. RABINOWITZ. Victor Rabinowitz, New York.

Mr. TAVENNER. Where and when were you born, Mr. Yellin?

Mr. YELLIN. July 2, 1927, Bronx, New York.

Mr. TAVENNER. Where do you now reside?

Mr. YELLIN. Fort Collins, Colorado.

Mr. SCHERER. I cannot hear the witness.

The CHAIRMAN. Where?

Mr. YELLIN. Fort Collins, Colorado.

Mr. TAVENNER. How long have you lived at Fort Collins, Colorado?

Mr. YELLIN. Since just about September of '57.

Mr. TAVENNER. '50?

Mr. YELLIN. September '57.

Mr. TAVENNER. Where did you reside prior to——

Mr. RABINOWITZ. Mr. Counsel, I wonder whether it would be possible to read into the record the exchange of telegrams between myself and the committee in connection with the witness's testimony. I would like to have it appear in the record.

The CHAIRMAN. We will decide whether it will be made a part of the record when the executive session is held. Go ahead.

Mr. RABINOWITZ. Mr. Chairman, I sent the telegrams because I wanted them to appear. I do not care whether they appear publicly or not. I do want it to appear that that exchange of telegrams occurred. I did not do it just to increase the revenue of the telegram company.

The CHAIRMAN. Well, whatever the reason was, whether it has been stated or otherwise, it will be considered in executive session.

Mr. RABINOWITZ. May I state——

The CHAIRMAN. Do not bother. You know the privileges given you by this committee. You have appeared before it often enough. You know as well as anybody.

Go ahead, Mr. Tavenner.

Mr. TAVENNER. Mr. Yellin, where did you reside prior to September 1957?

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Tavenner, is that right?

Mr. TAVENNER. Yes.

Mr. YELLIN. Mr. Tavenner, if I may I would like to say just a few words before I answer that question to state my grounds as to what my position will be on answering questions.

The CHAIRMAN. Just answer this question, not your grounds for answering questions that have not been asked.

Mr. YELLIN. Then let me say that I feel that this question and this line of questioning will probably lead into certain areas of my freedom of beliefs, and I feel that I would like to say just a few words as to why I would not care to answer this question.

The CHAIRMAN. It is not the case of whether you care to answer or not. It is a question of do you or do you not answer the question.

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Congressman, let me put it this way then: I will refuse to answer that question, and I would like the privilege——

The CHAIRMAN. What is the question, Mr. Tavenner?

Mr. TAVENNER. The question was where the witness lived prior to September 1951.

The CHAIRMAN. And you feel honestly that if you answer the question of where you lived before September of last year, you might be confronted with a criminal prosecution, is that it?

Mr. YELLIN. No. I didn't say that.

The CHAIRMAN. You did not say that, but is that not what you mean?

Mr. YELLIN. May I say what my objections are? If I can say what they are——

The CHAIRMAN. Go ahead——

Mr. YELLIN. Then you can question.

The CHAIRMAN. Go ahead.

Mr. YELLIN. Since I received the subpena to appear before this committee, I did the natural thing. I contacted counsel. I wrote to various sources for whatever legal information I could get, and I went to the public library to study as much of the law as I could.

Now, just the fact of being called before this committee creates a certain impression in the public eye which I do not like. I don't like to have my loyalty questioned or my character questioned. I feel that I have committed no crime. I have engaged in no acts——

The CHAIRMAN. Isn't this the best place to clarify the atmosphere? If you feel as you say you do, and I am sure that you do, is this not a great opportunity to eliminate whatever question might be in anybody's mind, particularly mine, about your activities?

Mr. YELLIN. Mr. Walter, I do not feel that this is the place for myself, as an individual and as a citizen, to discuss my beliefs, my associations, or whatever expressions of opinion I have ever made. I feel that ideas in the democratic process should be settled, should reach some kind of an understanding, in the market place of ideas and not at a congressional investigation. This is a personal opinion of mine. I believe the entire democratic process revolves around settling things in a free and open market, and this is not the place for it. This is a hearing. It is not an expression of public opinion.

Furthermore, after conferring with my counsel——

Mr. SCHERER. We are not asking you about your ideas or opinions. We are asking you about your activities within the conspiracy.

The CHAIRMAN. We are asking his address.

Mr. SCHERER. That is what we are going to ask him.

The CHAIRMAN. You don't know.

Mr. SCHERER. His activities with a conspiracy.

Mr. YELLIN. After conferring with counsel, I can only come to one conclusion, and that is that this line of questioning would infringe upon my rights under the first amendment to the Constitution. Now the Supreme Court in its recent decision in the Watkins and Sweezy cases has specifically stated that a legislative committee can only investigate the area pertinent to legislation. Now, the Constitution of the United States and the first amendment——

The CHAIRMAN. May I interrupt you at that point? I notice you have carefully avoided the Barenblatt case that followed the two cases that you mentioned, and in that case the Supreme Court held that we were charged with doing just exactly what we are doing now. That was U. S. against Barenblatt.

Mr. YELLIN. Mr. Congressman, I am not entirely familiar with the Barenblatt case.

The CHAIRMAN. You expressed great familiarity with the Watkins case.

Mr. YELLIN. The Supreme Court referred that case back to the court of appeals and the Supreme Court did not rule on this. It was just the court of appeals of some sort which just made this ruling, not the Supreme Court.

The CHAIRMAN. Then as a layman, I will straighten you out. What the Supreme Court did was to say that the decision of the Circuit Court of Appeals should stand and they refused to grant a writ of certiorari to review it.

Mr. RABINOWITZ. As a lawyer, Mr. Chairman, I would like the opportunity to straighten you out. But I guess this is not the chance.

The CHAIRMAN. You kind of lawyers could not straighten me out on anything. Go ahead, please.

Mr. YELLIN. May I continue, Mr. Congressman? I am not a lawyer.

Mr. TAVENNER. Let me interupt you a minute. You constantly referred to "this line of questioning." The only question I have asked you is where did you live prior to September 1957.

Mr. YELLIN. Mr. Tavenner——

The CHAIRMAN. Certainly one question could not be construed as a line of questions. You have been asked only one question.

Mr. YELLIN. May I continue?

The CHAIRMAN. Why don't you answer the question? Where did you live? That is all we want to know.

Mr. YELLIN. I heard the previous witness. I read proceedings of this committee in past cases. I read the newspapers concerning the history of this committee. If I say this line of questioning, I should say this particular question. It is pretty obvious where the questions will lead from what has gone before. So it is no sense in pinning it down and waiting to later. It is going to lead to a certain point. There is no question about that.

Now the grounds on which I object are the following: That the first amendment to the Constitution specifically says that Congress shall make no law abridging the freedom of speech. Now, therefore, Congress cannot investigate in that area because they cannot legislate

in that area. Furthermore, nobody can investigate in my conscience, in my personal beliefs. I have committed no unlawful acts; and, therefore, any questioning can only lead to opinions, expressions, associations, and beliefs and not any unlawful acts. Therefore, under the first amendment, I think I am fairly reasonable in objecting to any questions that will lead toward that line, investigating my freedoms.

Secondly, I am informed that the enabling resolution of the Congress of the United States establishing this House Committee on Un-American Activities is very vague and, therefore, leads to the possibility that I could not be accorded my rights under due process of law, on the basis of the fact that the courts cannot properly judge what the intent of this committee is due to the fact that it was established under a rather vague resolution.

Furthermore, the courts have ruled that the only questions this committee can ask me as an individual are questions which can be pertinent to any legislation.

I don't feel this question is pertinent to any legislation the committee might be investigating and, furthermore, as I said before, the committee cannot even investigate legislation pertaining to the first amendment.

Therefore, I will have to respectfully submit that I cannot answer that question.

The CHAIRMAN. You said, "I cannot." Of course, you are not under any prohibition. You could answer it. You mean, "I will not."

Mr. YELLIN. I cannot under my own moral conscience to uphold the traditions under which I believe.

The CHAIRMAN. Then you do not answer the question for those reasons, is that it?

Mr. YELLIN. Yes, sir.

The CHAIRMAN. All right.

Mr. SCHERER. Now, Mr. Chairman, so that the record is clear, I ask that you direct the witness to answer the question.

The CHAIRMAN. You are directed to answer the question. Where did you live prior to September 1957?

Mr. YELLIN. Mr. Congressman, under the reasons I have submitted, I cannot answer that question.

The CHAIRMAN. You mean you do not answer.

Mr. YELLIN. I will not answer that question.

The CHAIRMAN. All right.

Mr. TAVENNER. You do not rely, in your refusal to answer, upon the self-incriminating clause of the fifth amendment. Is that correct?

Mr. YELLIN. Yes, sir. That is correct. I am relying on my first amendment rights.

Mr. TAVENNER. You were present when the opening statement was made by the chairman of this committee, were you not?

Mr. YELLIN. Yes, sir; I was present at that time.

Mr. TAVENNER. This is a hearing which involves a subject described by the chairman, and it relates to Communist Party activities within the area of Gary. As far as pertinency of the question is concerned, as to which you seem to express some doubt, it would be impossible for us to learn anything from you regarding Communist Party activities in this area without ascertaining whether or not you were here for a period of time.

Now, having explained that and given you that reason as a basis for the committee's asking you that question, I would like to ask the chairman to again direct the witness to answer.

The CHAIRMAN. You are directed to answer the question.

Mr. YELLIN. Mr. Congressman, I cannot answer that question for the grounds already submitted.

The CHAIRMAN. By that you mean that you do not answer. You refuse to answer.

Mr. YELLIN. I will not answer.

The CHAIRMAN. All right.

Mr. TAVENNER. Mr. Yellin, will you give the committee, please, briefly, your formal educational training?

Mr. YELLIN. I believe, and I think the grounds I have already stated are sufficient, that any investigation into my educational background can serve no legislative purposes, is a violation of my rights under the first amendment; and I will not answer that question.

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. YELLIN. Would you repeat that please?

The CHAIRMAN. You are directed to answer the question.

Mr. RABINOWITZ. He asked the question be repeated.

Mr. YELLIN. I asked it be repeated.

The CHAIRMAN. What question?

Mr. YELLIN. The last statement addressed to me.

The CHAIRMAN. You declined to answer that. What did you think you declined to answer?

Mr. YELLIN. I declined to answer any questions pertaining to my education.

The CHAIRMAN. All right. Go ahead.

Mr. TAVENNER. Is it not a fact that you were a student at the College of the City of New York for several years prior to 1948?

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Tavenner, I will refuse to answer that question under the grounds already stated; but it just occurs to me that if the committee knows all these things, I can't see the purpose or the pertinency of asking me what they consider a known fact. Furthermore, it kind of appears to me as if this line of questioning is merely trying to create an impression and expose me for the sake of merely exposing me and not leading to any valid legislative purpose.

The CHAIRMAN. I will assure you that that is farthest from the intention of anybody on this committee, and this committee has never, for the mere sake of exposing, asked a question.

And now I would like to ask you: What do you mean by exposing you? Exposing you to what?

Mr. YELLIN. Well, Mr. Congressman, there has been a great deal of discussion, public discussion, in the newspapers, especially since the Supreme Court decision in Watkins and Sweezy; and pertaining to education, there has been a great deal of discussion in the newspapers about certain lagging that we are doing in our educational system. I should say rather that we have not reached our full potential in our educational system.

The CHAIRMAN. Perhaps too many people have been directing their attention to the wrong things.

Mr. YELLIN. Well, perhaps. One of the often expressed opinions at the universities and in the newspapers is that one of the reasons we have not reached our full potential is due to the fact that freedom of education, freedom of thought, has been, to a large extent, suppressed by committee investigations specifically of this type and of the type Senator McCarthy conducted. This is common knowledge at the universities. People are beginning to feel that freedom of thought and the expression of ideas—whether they be right or wrong, conform to what the majority believe or not—should be settled in a market place of ideas freely without being suppressed.

The CHAIRMAN. All right now.

Mr. YELLIN. Now if I remember——

The CHAIRMAN. We have heard that speech. Will you answer the question about your education?

Mr. YELLIN. You haven't heard it from me, sir.

The CHAIRMAN. What about the 2 years you were at the New York University or wherever it was?

Mr. TAVENNER. City College of New York.

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Congressman, Mr. Tavenner, I have already stated sufficient ground for refusing to answer that kind of question.

The CHAIRMAN. Go ahead, Mr. Tavenner.

Mr. TAVENNER. Mr. Chairman, I desire to offer in evidence a photostatic copy of the college record of Edward Yellin, at the University of Michigan. The first was in the College of Literature, Science and Arts.

May it be marked "Yellin Exhibit No. 1."

Mr. SCHERER. Did you say at the University of Michigan?

Mr. TAVENNER. Yes, sir.

The CHAIRMAN. All right. Let it be received.

(The document referred to was marked "Yellin Exhibit No. 1.")

The CHAIRMAN. Go ahead.

Mr TAVENNER. An examination of this exhibit, Mr. Chairman, reflects that Edward Yellin was transferred from the College of the City of New York to the University of Michigan.

And, in this connection I would like to introduce "Edward Yellin Exhibit No. 2," an additional official record from the University of Michigan, which I will ask to be marked No. 2.

The CHAIRMAN. All right.

(The document referred to was marked "Yellin Exhibit No. 2.")

Mr. RABINOWITZ. May I see that?

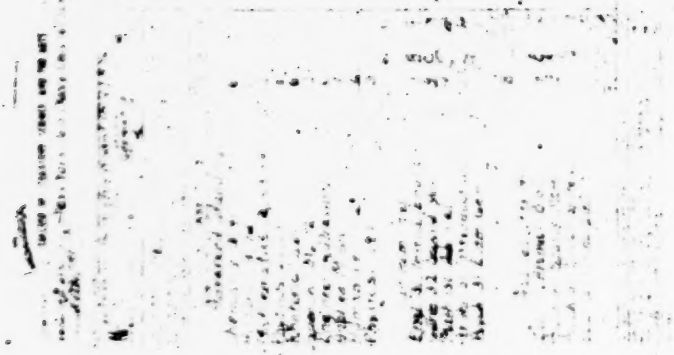
Mr. TAVENNER. Yes, sir.

(A document was handed to Mr. Rabinowitz.)

(The witness conferred with his counsel.)

Mr. TAVENNER. Mr. Chairman, I call your attention to the fact that Exhibit No. 2 shows that Edward Yellin was admitted to the University of Michigan in February 1948 from the College of the City of New York and Exhibit No. 1 indicates that he was transferred from the College of Literature, Science, and Arts at the University of Michigan to the engineering department at that university in September 1948. It reflects his grades, showing a grade of A in many subjects

Yellow Exhibits Nos. [illegible]



OFFICIAL RECORD

Mr. TAVENNER. Mr. Yellin, I hand you a photostatic copy of application for employment at the Carnegie Illinois Steel Corporation.

You will examine it please and state whether or not that appears to be a copy of an application filed by you.

(A document was handed to the witness.)

Mr. YELLIN. I refuse to answer that question on the grounds which I have already stated.

Mr. TAVENNER. Will you examine it please and state whether your name appears at the foot of that application?

Mr. YELLIN. I will. I cannot and will not answer that question, Mr. Tavenner, on the grounds already stated.

Mr. TAVENNER. Mr. Chairman, I offer in evidence as Yellin Exhibit No. 3 the document referred to and ask that it be marked "Yellin Exhibit No. 3."

The CHAIRMAN. For what purpose are you offering it?

Mr. TAVENNER. For the purpose of establishing the time that he came to Gary, Indiana, and the additional purpose of showing what he represented on his application to his would-be employer with regard to his education.

The CHAIRMAN. Did he represent that he had not been to college?

Mr. TAVENNER. His representation was as to his former school work at Stuyvesant, which I believe is a high school in the State of New York, with no answer under the word "college," or any other education.

The CHAIRMAN. All right.

Mr. TAVENNER. Is the document admitted?

The CHAIRMAN. The document is admitted.

(Document marked "Yellin Exhibit No. 3," follows:)

YELLIN EXHIBIT No. 3

CARNEGIE-ILLINOIS STEEL CORPORATION
APPLICATION FOR EMPLOYMENT

WRITE KIND OF WORK WANTED — DATE: June 3 '48

Electrician helper

Yellin Edward 088 20 4652

400 Jefferson Ave

Jean Inga Yellin — 7/2/27 — New York N.Y. - USA

Jefferson Ave

Mail — USA — USA

2A — 1921 — N Y

175

Brown

215 Yellin

Poland

Electrician

Mendlowicz

Poland

Jugan

Sept 45 — July 46

Navy

2 1/c

From U.S. to

Sept 46 Feb 48 Reo Motor Co

Feb 48 Apr 1948

Apr 48 May 49 Reo Motor

BUSINESS REFERENCES NOT RELATIVES
CHILDREN AND DEPENDENTS
Jean Lucien Fellin
DATE OF BIRTH
1931
Wife
RELATIVES IN EMPLOY OF THE U S STEEL CORPORATION AT PRESENT TIME
RELATIVES FORMERLY IN U S STEEL CORPORATION DISABLED OR DECEASED WHILE IN SERVICE OF U S STEEL CORPORATION
LANGUAGES
Slovenian
4
44
8
44

Mr. LAWSON. Mr. Yellin, I recall from the [illegible] that it was dated June 3, 1949. Where were you on June [illegible]? Where were you residing?

Mr. YELLIN. Mr. Lawson, I will not answer [illegible] on the grounds I have already stated.

Mr. LAWSON. Did you live in [illegible] County, in the State of Indiana at that time?

Mr. YELLIN. I will not answer [illegible] Mr. Lawyer.

Mr. LAWSON. I now turn to Exhibit No. [illegible], which is a report of employment by the applicant, Elmer Schwartz, dated February 28, 1948, at the Reo Motor Company in Lansing, Mich. Were you actually employed by that company?

Mr. YELLIN. I refuse to answer [illegible] on grounds already stated.

Mr. LAWSON. Exhibit No. [illegible] is a report of the University of Michigan [illegible] at the end of the second semester of the year 1947-48, and appears to be dated [illegible]. Were you a student at the University of Michigan during the year 1947-48?

Mr. YELLIN. I refuse to answer [illegible] on the grounds already stated.

Mr. LAWSON. Were you employed during the summer in April 1948 to May 1948 at Reo Motor [illegible] Mich.? Were you employed there?

Mr. YELLIN. I refuse to answer [illegible] on grounds already stated.

Mr. LAWSON. Were you employed by [illegible] New York and during the year [illegible] the accepted delegation of the U.

Mr. YELLIN. I refuse to answer [illegible] on grounds already stated.

Mr. LAWSON. Were you employed in Gary, Ind., during the summer [illegible] employment in Gary, Ind., [illegible] the Communist Party?

Mr. YELLIN. I refuse to answer [illegible] on grounds already stated.

Mr. LAWSON. Will you tell the committee whether or not you were a student at the University of Michigan during the year 1947-48?

Mr. YELLIN. I refuse to answer [illegible] on grounds already stated.

Mr. LAWSON. Did you at that time [illegible] you did not see the point [illegible] question. Do you refuse to answer [illegible] to the question [illegible]?

(The witness conferred with his counsel.)

Mr. YELLIN. Mr. Tavenner, I mean to reiterate all of the reasons I have given.

The CHAIRMAN. Then explain, Mr. Tavenner, the reasons.

Mr. YELLIN. As grounds. They are all grounds for refusal to answer.

The CHAIRMAN. Explain, Mr. Tavenner.

Mr. TAVENNER. It has been testified here that colonization of young men in the middle of their educational courses in industry was a deep-seated plan of the Communist Party to strengthen itself within basic industry. The chairman's opening statement indicated that the activities of the Communist Party within basic industries was the subject of inquiry here.

Let me ask you: You were present during the testimony of the former witness?

Mr. YELLIN. Yes, sir.

Mr. TAVENNER. The statement was made here of the practice of the Communist Party in colonizing industry at Flint, Michigan; at the University of Colorado, which is at Fort Collins, Colorado, where you now reside; and other places.

In order to understand the full tactics of the Communist Party in its operations here in Gary, it is necessary the committee understand fully the extent of such practices, the full purposes of it, and the methods by which it is put into effect. That is the connective reasoning of the committee in asking the question. It is certainly apparent from that explanation.

So with that explanation, Mr. Chairman, I ask that the witness be again directed to answer.

The CHAIRMAN. You are directed to answer the question.

Mr. YELLIN. Mr. Congressman, I am fully aware, on the basis of the previous witness's testimony and on the basis of what committee counsel has just said, that certain impressions will be created in the public eyes as regards myself as an individual. However, I cannot, in good conscience or within legal protection, answer that question on the grounds I have already stated.

Mr. SCHEER. I think a very bad impression will be created in the public mind because of your making at least 5 misrepresentations on your application for employment to the Carnegie-Illinois Steel Corporation.

Mr. YELLIN. I realize there will be many bad impressions created but, as I said, I am powerless to straighten out those impressions at this time.

The CHAIRMAN. I could not conceive of a better place to straighten out all these impressions. All you have to do is answer these questions.

Did you state, or were you asked, where you are now employed? Where you are employed at the present time?

Mr. YELLIN. I will decline to answer that question on the grounds I have already stated.

Mr. SCHEER. I ask you to direct the witness to answer the question.

The CHAIRMAN. You are directed to answer the question, where are you employed?

Mr. YELLIN. I will decline to answer that question, sir, on the grounds stated.

The CHAIRMAN. Go ahead, Mr. Tavenner.

Mr. TAVENNER. Were you a member of the Neafus Club of the Communist Party at the University of Michigan?

Mr. YELLIN. I will decline to answer that question, sir, on the grounds already stated.

Mr. TAVENNER. Were you acquainted with a person at the University of Michigan by the name of Francis X. T. Crowley?

Mr. YELLIN. I decline to answer that question on the grounds already stated, sir.

Mr. TAVENNER. Mr. Crowley testified before the Committee on Un-American Activities in June of 1954, at which time he identified you as a member with him of the Neafus Club of the Communist Party at Ann Arbor. Was he correct in his identification of you?

Mr. YELLIN. I will decline to answer that question, sir, on the grounds I have already stated.

Mr. TAVENNER. Were you a member of the Communist Party on the 23d day of June 1949, which is the date of application filed in your name for employment in Gary?

Mr. YELLIN. I will decline to answer that question on the grounds I have already stated.

Mr. TAVENNER. Mr. Chairman, may I have a direction that that question be answered in light of the explanation already made?

The CHAIRMAN. You are directed to answer the question.

Mr. YELLIN. I decline to answer, sir.

The CHAIRMAN. Do you understand that when Mr. Tavenner asks you a question about a man who testified that you and he were members of a Communist group at the University of Michigan, this testimony was under oath. This man swore that you and he were members of the Communist Party. Did you understand that?

(The witness conferred with his counsel.)

Mr. YELLIN. Do I understand that he was under oath?

The CHAIRMAN. That is right.

Mr. YELLIN. Yes, sir.

Mr. TAVENNER. Were you active in the American Veterans Committee prior to June 1949?

Mr. YELLIN. I will have to decline to answer that. I think it is a violation of my freedom of associations.

Mr. TAVENNER. Were you acquainted with a person by the name of Edward Shaffer from Pittsburgh?

Mr. YELLIN. I decline to answer that question, sir.

Mr. TAVENNER. During the examination of Edward Shaffer before this committee during the conduct of hearings in 1954, in fact, in May 1954, there was introduced in evidence a photostatic copy of the Detroit News bearing the date of January 7, 1949, entitled "Three Hold AVC Ban on Reds." It is Exhibit No. 2 in that hearing. I will read part of that exhibit:

> Three students resigned today from the University of Michigan chapter of the American Veterans Committee because of a ruling adopted by the national AVC [meaning American Veterans Committee] convention in November, calling for the ouster of members who belonged to the Communist Party.
>
> They were [that is, the three who resigned] William Carey, 3173 Townsend Avenue, Detroit; Edward Shaffer, of Pittsburgh; and Edward Yellin, of New York.

Was your action at that time correctly reported by the Detroit News?

Mr. YELLIN. I am declining to give you that information, sir.

Mr. TAVENNER. Will you tell the committee whether or not in 1957 there were present a number of individuals in Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party?

Mr. YELLIN. I decline to answer that question, sir.

Mr. TAVENNER. Mr. Chairman, in light of the explanation made of the pertinency of this line of questioning, I request the witness be directed to answer the question.

The CHAIRMAN. You are directed to answer the question, Mr. Yellin.

Mr. YELLIN. On the grounds I have previously stated, I will not answer the question.

Mr. SCHERER. Those grounds do not include the invocation of the fifth amendment against self-incrimination?

(The witness conferred with his counsel.)

Mr. YELLIN. I have declined, sir.

Mr. TAVENNER. Were you a member of the Communist Party in August of 1957?

Mr. YELLIN. I will decline to answer that question on the grounds I have stated.

Mr. TAVENNER. Will you tell the committee what [illegible] Communist Party took in Gary in any of its units with regard to the acts of the Soviet Union in Hungary in 1956?

Mr. YELLIN. I will decline to answer that question, sir.

Mr. TAVENNER. May I have a direction that the witness answer that question?

The CHAIRMAN. You are directed to answer the question, Mr. Yellin.

Mr. TAVENNER. Are you a member of the Communist Party now?

Mr. YELLIN. I decline to answer that question on the grounds I have already stated.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Any questions, Mr. Scherer?

Mr. SCHERER. No questions.

The CHAIRMAN. The committee will stand in recess until 2 o'clock.

Whereupon, at 12:30 p.m., February 10, 1958, the committee recessed, to reconvene at 2 p.m. this same day.

AFTERNOON SESSION, MONDAY, FEBRUARY 10, 1958

Mr. [illegible]

Mr. TAVENNER. Mr. [illegible]

The CHAIRMAN. [illegible] Do you [illegible] the whole truth, and [illegible]

Mr. [illegible]

Mr. [illegible]

TESTIMONY OF NICHOLAS M. BUSIC, ACCOMPANIED BY COUNSEL, VICTOR RABINOWITZ

Mr. Busic. Nicholas M. Busic.

Mr. TAVENNER. Will counsel accompanying the witness please identify himself for the record?

Mr. RABINOWITZ. Victor Rabinowitz of New York.

And may I at this time make [illegible] request that I deal with respect to the previous witness, respecting the exchange of telegrams between myself and the committee?

The CHAIRMAN. Let the record note the request.

Mr. TAVENNER. How do you spell your name?

Mr. Busic. Busic.

Mr. TAVENNER. When and where were you born, Mr. Busic?

Mr. Busic. November 26, 1895.

Mr. TAVENNER. Where do you now reside?

Mr. Busic. At [illegible]

Mr. TAVENNER. In Gary?

Mr. Busic. In Gary.

Mr. TAVENNER. How long have you lived in Gary?

Mr. Busic. Since June 1906.

Mr. TAVENNER. Mr. Busic?

Mr. Busic. Pardoning, since May 1906.

Mr. TAVENNER. Mr. Busic, will you advise the committee, please, whether or not the Communist Party is engaged in Communist Party activities at this time [illegible] industry in Gary?

(The witness conferred with his counsel.)

Mr. Busic. I am not a lawyer, and I am not a Progressive Party. I only had three years' school in this country. Therefore, I decline to answer on the following grounds:

1. The committee is seeking to [illegible] my political beliefs under the first amendment.

2. [illegible]

The CHAIRMAN. Let me interrupt you there. We are not asking you about your [illegible]. We are asking you [illegible] Communist Party [illegible]

(The witness conferred with his counsel.)

Mr. Busic. I refuse to answer on the grounds that I [illegible] already stated.

Mr. TAVENNER. What was the [illegible]

Mr. Busic. 1. The committee is seeking to [illegible] my political beliefs under the first amendment.

2. [illegible]

Mr. TAVENNER. About what?

Mr. RABINOWITZ. Public [illegible]

Mr. Busic. Public [illegible]

2. The procedure [illegible]

3. The investigation is [illegible]

4. The [illegible] tion.

5. The committee may [illegible] exposure.

Mr. TAVENNER. Well, you actually understand, do you not, that the question of Communist Party activities in steel here in Gary is pertinent to the subject of the investigation? Do you not?

(The witness conferred with his counsel.)

Mr. BUSIC. I can't argue with you, Mr. Congressman, and therefore I refuse to answer the question on the grounds as already stated.

Mr. TAVENNER. If this committee is investigating the extent, character, and objects of Communist Party propaganda activities within steel, the question I ask you is certainly pertinent. You agree to that, do you not, when I ask you the question of whether you have knowledge of the very thing which this committee is investigating?

(The witness conferred with his counsel.)

Mr. BUSIC. I don't think I have to answer that question on advice of my lawyer.

Mr. TAVENNER. Were you present this morning when the chairman of the committee read his opening statement?

Mr. BUSIC. I was present, but I was way back, and I can't hear very well.

Mr. TAVENNER. Well, then, to be certain that you understand what the subject is, I will state again what the chairman stated and that is that the committee is undertaking to receive evidence regarding the techniques and strategy of the Communist Party in infiltrating unions within the steel industry and also the extent of Communist Party propaganda within the steel industry. Those are the subjects.

Now the question that I ask you is a very simple one and that is: Tell this committee what knowledge you have regarding Communist Party activities that are being engaged in now in the steel industry in Gary.

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer on the same grounds I already stated.

Mr. TAVENNER. Mr. Chairman, I don't think I can make it any plainer than that. I, therefore, ask that the chairman direct the witness to answer.

The CHAIRMAN. The witness is directed to answer the question.

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer that question on the grounds I already stated.

Mr. TAVENNER. How long have you been employed as a steelworker by the U. S. Steel Corporation?

Mr. BUSIC. It will be 22 years on 20th of next June.

Mr. TAVENNER. Will you tell the committee, please, whether or not at any time within the past 2 or 3 years you have been affiliated with an organized group of the Communist Party within the steel industry?

(The witness conferred with his counsel.)

Mr. BUSIC. I haven't been member of the Communist Party for over a year.

Mr. TAVENNER. For over a year?

Mr. BUSIC. Yes.

Mr. TAVENNER. Then when was it that you left the Communist Party, what time of year?

Mr. RABINOWITZ. I have some difficulty because the witness does not hear very well, and it is a little hard to communicate in whispers here.

Mr. TAVENNER. Take your time.

The CHAIRMAN. We promise not to listen.

Mr. TAVENNER. I am not trying to eavesdrop.

Mr. RABINOWITZ. No. I know you are not.

Mr. TAVENNER. I know what you are telling him.

Mr. RABINOWITZ. I don't mind saying it out loud. Then we would all hear.

The CHAIRMAN. We know what you are telling him.

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer any questions before a year ago, better than a year ago.

Mr. TAVENNER. Yes. I ask you what time in 1957 was it that you left the Communist Party?

(The witness conferred with his counsel.)

Mr. BUSIC. I can't exactly remember; therefore, I refuse to answer.

Mr. TAVENNER. Was it in the early part of the year or the latter part of the year?

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer the question on the same grounds already stated.

Mr. TAVENNER. When did you first learn an investigation of communism was to be made in this area?

(The witness conferred with his counsel.)

Mr. BUSIC. When I got the subpena.

Mr. TAVENNER. Did you have any dispute within the Communist Party which led to your withdrawing from it last year?

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer that question on the same grounds I already stated.

Mr. TAVENNER. What type of Communist Party activities was being carried on within the steel industry at the time you left the party?

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer on the same grounds that I already stated.

Mr. TAVENNER. Mr. Chairman, may I have a direction that he answer that question?

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer the question on the same grounds I stated.

The CHAIRMAN. As I understand it, the record discloses that up to about a year ago you were a member of the Communist Party.

(The witness conferred with his counsel.)

The CHAIRMAN. Is that correct?

(The witness conferred with his counsel.)

Mr. BUSIC. I didn't admit that I ever been member of the Communist Party.

The CHAIRMAN. How could you get out of the Communist Party if you had never been in it?

Mr. RABINOWITZ. He didn't say that he got out of the Communist Party.

Mr. TAVENNER. The witness said he hadn't been a member for the past year.

Mr. RABINOWITZ. That is true.

The CHAIRMAN. Well, were you a member before a year ago?

Mr. Buste. Yes.

Mr. Tavenner. When did you come to [illegible]?

Mr. Buste. 1913.

Mr. Tavenner. Are you a naturalized American citizen?

Mr. Buste. I am.

Mr. Tavenner. When and where were you naturalized?

Mr. Buste. 1925 in Chicago.

Mr. Tavenner. Were you at any time a member of the Communist Party? If so, from time to time you were [illegible]

Mr. Buste. I refuse to answer that question on the grounds

Mr. Tavenner. Have you been identified or did you [illegible] years, I would say at this time within the last [illegible] organization, a foreign language group [illegible]?

The Chairman. What's that?

Mr. Tavenner. Known as [illegible]

[illegible]

Mr. Buste. I refuse to [illegible]

Mr. Tavenner. Were [illegible] persons known to you to be [illegible]

Mr. Buste. I refuse to answer [illegible] as I stated.

Mr. Tavenner. Were [illegible] January 1, 1957?

Mr. Buste. I refuse to [illegible] already stated.

Mr. Tavenner. Were you a [illegible] December 28, 1939?

Mr. Buste. I [illegible] already stated.

Mr. Tavenner. I hand you [illegible] Will you examine it [illegible]

[illegible]

Mr. Buste. I [illegible]

Mr. Tavenner. [illegible] that organization?

(The document referred to marked "Basic Exhibit No. 1" follows:)

BASIC EXHIBIT NO. 1

CERTIFICATION BY PRESENT EMPLOYEE

Navy Yard Washington Machinery 43585 Dec. 28-40

APPLICATION DEPARTMENT CHECK NO. DATE

I, Nicholas M. Busic, understand that the Selective Training and Service Act of 1940 of the United States of America prohibits me, if I am or should become a member of the Communist Party or the German-American Bund, from filling any vacancy caused by reason of induction of employees into the service of the United States under such Act.

In order to protect my right for transfer or promotion, I hereby certify that I am not, and will not become during the course of my employment, a member of the Communist Party or the German-American Bund.

I understand that if I am transferred, promoted or otherwise moved into a position created as a result of the absence of an employee who has been called to government service, my holding of such position will be on a temporary basis during such absence, and that upon the return of the absent employee I will be reinstated in my former position, or in a position of like seniority status and pay, unless the circumstances within the company have so changed as to make it impossible or unreasonable to do so.

I also understand that, if while filling a temporary vacancy I am called to military training and service, there is an obligation on the company to restore me to this temporary position and that, when discharged from such military training and service, I will be reinstated in my former position or in a position of like seniority status and pay, unless the circumstances within the the company have so changed as to make it impossible to do so.

For reemployment, I also understand that I must reapply within 40 days after my year of service is completed, and that I must present a certificate of satisfactory completion of training and be qualified to perform the duties of the position.

I understand all the above requirements are in accord with the Selective Training and Service Act of 1940.

Employee: Nicholas M. Busic
Signed

The CHAIRMAN. May I see it, please?

(The document was handed to the chairman.)

The CHAIRMAN. Does this Gary Works Maintenance Department mean Gary Works, United States Steel?

(The witness conferred with his counsel.)

Mr. BUSIC. I don't know what it means.

(The document was handed to the witness.)

Mr. TAVENNER. You say you do not understand what this means? Did I understand you to say that you do not understand what this paper means?

Mr. RABINOWITZ. Let me see.

(The document was handed to Mr. Rabinowitz.)

(The witness conferred with his counsel.)

Mr. BUSIC. Yes, called Gary Works.

Mr. TAVENNER. You do know now?

Mr. BUSIC. Yes, I do now.

Mr. TAVENNER. What does it mean?

Mr. BUSIC. Gary Works.

Mr. TAVENNER. The place were your work?

Mr. BUSIC. Yes, called the Gary Works.

Mr. TAVENNER. And you were employed there?

Mr. BUSIC. Yes.

(The document was handed to the witness.)

Mr. TAVENNER. Now it bears the date of December 28, 1940. Were you a member of the Communist Party at that time?

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer that question on the same ground I stated already.

Mr. TAVENNER. I will read you a part of this certificate. It says:

I hereby certify that I am not, and will not become during the course of my employment, a member of the Communist Party or the German American Bund.

You remember that, do you not?

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer on the same grounds that I already stated.

Mr. TAVENNER. Were you telling the truth when you certified to your employer that you were not a member of the Communist Party on December 28, 1940?

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer that question.

Mr. TAVENNER. When you signed this certificate on December 28, 1940, were you intending to tell the truth, when you stated, "I will not become during the course of my employment a member of the Communist Party"?

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer the question.

Mr. TAVENNER. In fact, you knew when you signed this document that you would not abide by what you stated you would abide by, didn't you?

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer the question on the same ground that I already stated.

Mr. SCHERER. Were you a member of the Communist Political Committee?

(The witness conferred with his counsel.)

Mr. BUSIC. I refuse to answer that question on the same grounds that I already stated.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Any questions, Mr. Scherer?

Mr. SCHERER. Yes, I have some questions.

You say that you have not been a member of the Communist Party during the last year. Have you been a Communist during the last year?

(The witness conferred with his counsel.)

Mr. SCHERER. Irrespective of party membership, have you been a Communist during the last year?

(The witness conferred with his counsel.)

Mr. BUSIC. I don't understand.

Mr. SCHERER. I just asked whether you had been a Communist during the last year.

(The witness conferred with his counsel.)

Mr. SCHERER. You know what a Communist is. You said you had not been a member of the Communist Party during the last year. Now, I am asking you whether you had been a Communist, irrespective of whether you carried party membership or not?

Mr. BUSIC. I don't understand the question.

Mr. SCHERER. How could you understand the question that was asked you as to whether you had been a member of the Communist Party if you cannot understand my question now, or claim not to understand my question now, as to whether you are presently a Communist?

(The witness conferred with his counsel.)

Mr. BUSIC. I cannot understand.

Mr. SCHERER. Have you been under Communist discipline in the last year?

(The witness conferred with his counsel.)

Mr. BUSIC. No.

Mr. SCHERER. Have you associated with members of the Communist Party or Communists during the last year?

Mr. BUSIC. I refuse to answer that question.

Mr. SCHERER. I did not hear your last answer.

Mr. BUSIC. I refuse to answer that question on the same grounds that I already stated.

Mr. SCHERER. Have you taken any instructions from members of the Communist Party or from Communists during the last year?

(The witness conferred with his counsel.)

Mr. BUSIC. No.

Mr. SCHERER. I have no further questions.

The CHAIRMAN. The witness is excused.

Mr. TAVENNER. Mr. Robert Kates, will you come forward, please?

The CHAIRMAN. Will you raise your right hand, please? Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KATES. I do.

1907

TESTIMONY OF ROBERT W. BATES ACCOMPANIED BY COUNSEL

Mr. TAVENNER. What do you mean by that—not so far as you know?

Mr. KATES. Well, I discussed my leaving with my wife, relatives, friends; and as far as I know, I wasn't counseled.

Mr. TAVENNER. Did you discuss it with any member of the Communist Party?

(The witness conferred with his counsel.)

Mr. KATES. Not as far as I know, sir.

Mr. TAVENNER. After obtaining employment in the Big Mill, did you find that there existed in that mill an organized group of the Communist Party?

(The witness conferred with his counsel.)

Mr. KATES. I respectfully decline to answer because the information sought is outside the powers granted this committee in its appointment, or that could be granted it, and would infringe and deny my rights under the first and fourth amendments to the Constitution of the United States, which rights I here assert and rely on.

Mr. SCHERER. Just a moment. May I ask a question?

Do I understand you are not relying on the fifth amendment in refusing to answer that question?

(The witness conferred with his counsel.)

Mr. KATES. I am not relying on the fifth amendment.

Mr. SCHERER. Then, Mr. Chairman, I ask that you direct the witness to answer the question whether or not he became acquainted with any Communist Party activities.

The CHAIRMAN. I direct you to answer the question.

Mr. KATES. I only repeat that I decline to answer on the grounds I previously stated.

The CHAIRMAN. All right.

Mr. TAVENNER. I believe you stated you are enrolled at the present time in an Indiana institution?

Mr. KATES. Yes, sir.

Mr. TAVENNER. Are you still employed in the Big Mill?

Mr. KATES. Yes, sir.

Mr. TAVENNER. Will you tell the committee, please, whether or not you have observed Communist Party propaganda activities within the Big Mill at any time within the past 2 years?

(The witness conferred with his counsel.)

Mr. KATES. I repeat that I decline to answer on the grounds I previously stated.

Mr. TAVENNER. You understand the pertinency of that question to the subject of this hearing; do you not?

(The witness conferred with his counsel.)

Mr. KATES. I repeat that I decline to answer on the grounds I previously stated.

Mr. SCHERER. Wait a minute. I think he should answer whether he understands the pertinence, because the courts charge us with the duty of asking him whether he understands the pertinency of the question.

(The witness conferred with his counsel.)

Mr. SCHERER. He has to answer that question yes or no as to pertinency.

Mr. KATES. As to pertinency, I repeat my original objections, that all this questioning is outside the powers granted this committee in its appointment or could be granted it.

Mr. SCHERER. It wasn't the question asked you by counsel. He asked you whether you understood the pertineney of the question he asked you, as to how that question related to the hearing. Do you comprehend how that question is related to the purpose of these hearings?

Mr. KATES. I can only repeat that it is not pertinent—that I think it is not pertinent, sir.

The CHAIRMAN. Go ahead.

Mr. TAVENNER. Mr. Chairman, I ask that the witness be directed to answer that question.

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. KATES. I can only repeat the objection I raised as previously stated.

Mr. TAVENNER. I am not certain that the way in which I asked that question that the record shows that the direction was made as to the original question. So I will ask it again: Please tell this committee what Communist Party propaganda activities have been conducted at the Big Mill during the past 2 years or at any time during the past 2 years.

(The witness conferred with his counsel.)

Mr. KATES. I can only repeat that I decline to answer on the grounds I previously stated, sir.

The CHAIRMAN. You are directed to answer that question.

Mr. KATES. I repeat that I decline to answer on the grounds I previously stated.

The CHAIRMAN. All right. Go ahead, Mr. Tavenner.

Mr. SCHERER. Pardon me, just a minute.

When the chairman directs you to answer the question, you understand that we do not accept the grounds which you give for refusal to answer the question. You understand that, do you not?

(The witness conferred with his counsel.)

Mr. KATES. I understand it, sir.

Mr. TAVENNER. Have you been a member of the Communist Party at any time during the past 2 years?

(The witness conferred with his counsel.)

Mr. KATES. I decline to answer on the grounds I previously stated.

Mr. TAVENNER. Were you a member of the Communist Party when you first took employment with the Big Mill?

Mr. KATES. I decline to answer on the grounds I previously stated.

Mr. SCHERER. Mr. Chairman, again I think there should be a direction to answer that question, because that is the very heart of the question.

The CHAIRMAN. Yes. You are directed to answer that question.

Mr. KATES. I can only repeat that I decline to answer on the grounds I previously stated.

Mr. TAVENNER. Were you a member of the Communist Party in 1950?

(The witness conferred with his counsel.)

Mr. KATES. I can only repeat that I decline to answer on the grounds I previously stated.

Mr. TAVENNER. Did you at any time serve as a member of the Communist Party, Steel Section, or the Steel Section of the Communist Party in Gary?

(The witness conferred with his counsel.)

Mr. KATES. I can only repeat that I decline to answer on the grounds I previously stated.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Any questions, Mr. Scherer?

Mr. SCHERER. I have no questions.

The CHAIRMAN. No further questions.

Call your next witness, Mr. Tavenner.

Mr. TAVENNER. Mr. Alfred Samter.

The CHAIRMAN. Will you raise you right hand, please? Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SAMTER. I do.

TESTIMONY OF ALFRED JAMES SAMTER, ACCOMPANIED BY COUNSEL, IRVING MEYERS

Mr. TAVENNER. Will you state your name, please, sir?

Mr. SAMTER. My name is Alfred James Samter.

Mr. SCHERER. I did not get the last name.

Mr. SAMTER. Samter.

Mr. TAVENNER. Will you spell your last name, please?

Mr. SAMTER. S-a-m-t-e-r.

Mr. TAVENNER. It is noted that you are accompanied by counsel. Will counsel please identify himself for the record?

Mr. MEYERS. My name is Irving Meyers. I am from Chicago.

At this time I would like to inquire whether you have seen my telegram of last Saturday. If not, I would like to present it now, and I would like to have a response to it, if I may. It is a telegram requesting an executive hearing.

The CHAIRMAN. I would like to see it.

Mr. TAVENNER. I had not seen it because I was here Saturday. I guess your telegram was sent to Washington.

Mr. MEYERS. That is right. On behalf of this client and a number of others.

The CHAIRMAN. Of course, this request is based on a false premise. If it is in the nature of a request, we can only do what we have always done in cases of this kind, and that is refuse to grant the request.

Mr. MEYERS. May I have the request entered in the record on behalf of this client and all the other clients I represent?

The CHAIRMAN. Yes.

Mr. TAVENNER. It may be.

The CHAIRMAN. Yes. Why did you wait until Saturday to send me the telegram?

Mr. MEYERS. I interviewed my clients on Saturday. A number of them received subpenas during the week, and it took some time for us to get together.

Mr. TAVENNER. When and where were you born, Mr. Samter?

The CHAIRMAN. Let us get his address first. We neglected to do that with the last witness.

Mr. TAVENNER. Where do you reside?

Mr. SAMTER. I reside in Gary.

Mr. TAVENNER. Where in Gary?

Mr. SAMTER. The address is 501 East 47th Place.

Mr. TAVENNER. When and where were you born?

Mr. SAMTER. I was born on January 27, 1922, in New York City.

Mr. TAVENNER. When did you first come to Gary?

Mr. SAMTER. Approximately 9 years ago.

Mr. TAVENNER. About 1948 or 1949?

Mr. SAMTER. 1949.

Mr. TAVENNER. 1949?

Mr. SAMTER. Yes, sir.

Mr. TAVENNER. What type of year?

Mr. SAMTER. Spring.

Mr. TAVENNER. Where were you residing immediately prior to your coming to Gary?

(The witness conferred with his counsel.)

Mr. SAMTER. New York City.

Mr. TAVENNER. Have you been in Gary since that time, 1949?

Mr. SAMTER. I beg your pardon?

Mr. TAVENNER. Have you lived in Gary continuously since 1949?

Mr. SAMTER. Yes, sir.

Mr. TAVENNER. Will you tell the committee, please, briefly what your formal educational training has been?

Mr. SAMTER. I am a high school graduate.

Mr. TAVENNER. Have you had any other training, educational training?

(The witness conferred with his counsel.)

Mr. SAMTER. Are you referring to college training, Mr. Attorney?

Mr. TAVENNER. Any school training.

(The witness conferred with his counsel.)

Mr. SAMTER. I don't believe that this committee is empowered to inquire into my education under the charter of the committee, which I don't completely understand. Anyhow, I don't believe that the question on my education is pertinent, and I do believe it is an invasion of my civil rights under the first amendment to the Constitution, so I will decline to answer that question.

Mr. SCHERER. Why did you tell us then, when asked about your education, that you had a high school education and now decline to go further?

(The witness conferred with his counsel.)

Mr. SAMTER. I repeat the same answer under the same rights that I previously stated.

Mr. SCHERER. Have you been a student at any Communist Party training school? Let us get right to it.

(The witness conferred with his counsel.)

Mr. SAMTER. Same answer as previously stated.

Mr. SCHERER. I put it to you as a fact that you have been a student at a Communist Party training school and ask you now, while you are under oath, either to affirm or deny that fact.

(The witness conferred with his counsel.)

Mr. SAMTER. Same answer as previously stated.

Mr. TAVENNER. Did you, in your application for employment, refuse to tell your employer what your educational training had been?

(The witness conferred with his counsel.)

Mr. SAMTER. I am sorry. I don't understand your question.

Mr. TAVENNER. Well, you have refused to tell this committee what educational training you have had. My question was, did you also refuse to tell your employer when you filed your application for employment what your educational training had been?

(The witness conferred with his counsel.)

Mr. SAMTER. I decline to answer that question on the grounds that you have no right to inquire into my personal relationships under the first amendment and also on the previous grounds that I stated.

Mr. SCHERER. You are not refusing to answer on the basis of any right you might claim to have under the fifth amendment, are you?

(The witness conferred with his counsel.)

Mr. SAMTER. I assert my right to due process under the fifth amendment, but as far as any other part of the fifth amendment, I am not asserting that right.

Mr. SCHERER. You are not refusing to answer on the basis of that part of the fifth amendment which gives you the right to refuse to answer on the grounds that to answer might tend to incriminate you. Is that right?

(The witness conferred with his counsel.)

Mr. SAMTER. That is correct.

Mr. SCHERER. Then I ask, Mr. Chairman, that you direct him to answer the question.

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. SAMTER. I still refuse to answer under the same basis.

The CHAIRMAN. All right.

Mr. TAVENNER. Did you attend the American Radio Institute?

(The witness conferred with his counsel.)

Mr. SAMTER. I refuse to answer that question under the grounds previously stated.

Mr. TAVENNER. Upon your coming to Gary in 1949, did you immediately identify yourself in an active way with the Communist Party?

(The witness conferred with his counsel.)

Mr. SAMTER. I refuse to answer that question on the same grounds as previously stated.

Mr. TAVENNER. Have you been a leader in the Communist Party, in the Big Mill Unit of the Communist Party?

(The witness conferred with his counsel.)

Mr. SAMTER. I refuse to answer that question on the same grounds as previously stated.

Mr. TAVENNER. What propaganda activities are being engaged in now by the Communist Party group within the Big Mill where you are employed?

(The witness conferred with his counsel.)

Mr. SAMTER. I refuse to answer that question on the grounds previously stated.

Mr. TAVENNER. Is there any question in your mind as to the pertinency of that question to the subject under inquiry here?

(The witnessed conferred with his counsel.)

Mr. SAMTER. Yes, sir. First of all, I do not understand the pertinency. I do not believe it is pertinent to the inquiry. I do not understand the purposes of the inquiry. I do not believe it is pertinent to the powers of the committee, and I do not understand completely what those powers of the committee are. I might add, Mr. Counselor, that I believe that the courts are finding difficulty in determining just exactly what the powers of this committee are, and I certainly don't understand them.

Mr. TAVENNER. Well, the question of the powers of the committee was not involved in my question in any way. It is hard for me to understand that you, in good faith, do not understand the pertinency of the question. But inasmuch as you say you do not understand it, let me repeat again what the chairman stated in his opening statement.

You were present at that time, were you not?

Mr. SAMTER. Yes, sir.

Mr. TAVENNER. The chairman stated that the subject of this inquiry was the receipt of testimony relating to the tactics and techniques of Communist infiltration in the steel industry and the extent, character, and objects of Communist Party propaganda within the steel industry, that is, within basic industry.

Now, when I ask you the question, or the committee asks the question, as to what the Communist Party is doing now in the way of propaganda within basic industry, that statement answers the pertinency raised by you.

So I will have to request that the chairman direct you to answer that question in view of that explanation.

(The witness conferred with his counsel.)

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. SAMTER. I refuse to answer on the same basis that I have on the other question.

Mr. TAVENNER. Aren't you actually the leader of the Communist Party in the mill group right now?

(The witness conferred with his counsel.)

Mr. SAMTER. I refuse to answer on the basis of the same reasons given.

Mr. SCHERER. What do you actually do in the mill, Witness? What is your job?

(The witness conferred with his counsel.)

Mr. SAMTER. Well, I work in a department which manufactures by-products from the coke-making process in the coke plant.

Mr. SCHERER. What do you do? What is your exact work?

Mr. SAMTER. Do you want my exact title, sir?

Mr. SCHERER. No. I want to know what you do. Do you do clerical work? Do you work on an assembly line? Do you work in a foundry, or what?

Mr. SAMTER. It is a department which is similar to an oil refinery.

Mr. SCHERER. I am not asking about the department. I am asking what you do. What is the nature of your work?

Mr. SAMTER. In order to describe what I do, Mr. Congressman, I have to describe what type of department it is because it is not either an assembly line or foundry, as you suggested. It is a distillation unit, very similar to an oil refinery, in which materials, taken as by-

products of coke-making process, are passed through steel and by-product oils are made.

In this process, I turn valves; I direct the flows of these various pieces of equipment; I look at them to see that they are in working order, and see that the pumps are running correctly and various many duties such as those.

Mr. SCHERER. All right.

Mr. TAVENNER. When you came to Gary to seek employment, did you confer in New York with any member of the Communist Party with regard to your coming to Gary?

(The witness conferred with his counsel.)

Mr. SAMTER. I decline to answer that question on the same grounds as previously stated.

The CHAIRMAN. You are directed to answer that question.

(The witness conferred with his counsel.)

Mr. SAMTER. I decline to answer on the same grounds as previously stated.

Mr. TAVENNER. Did you attend any classes or schooling of any kind in New York City preparing young men to go out in the labor field to become leaders in the field of labor?

(The witness conferred with his counsel.)

Mr. SAMTER. I decline to answer on the grounds as previously stated.

Mr. TAVENNER. Were you a member of the Communist Party in the City of New York before coming to Gary?

(The witness conferred with his counsel.)

Mr. SAMTER. I decline to answer on the grounds as previously stated.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Any questions, Mr. Scherer?

Mr. SCHERER. Have you ever served in the Armed Forces of the United States?

(The witness conferred with his counsel.)

Mr. SAMTER. Yes, sir.

Mr. SCHERER. When was that service?

Mr. SAMTER. From 1942 until 1945. I don't recall the exact dates.

Mr. SCHERER. In what branch of the service?

Mr. SAMTER. Army.

Mr. SCHERER. And where were you? What type of work did you do in the Army? What particular assignment did you have?

Mr. SAMTER. I was a radio operator in an armored division.

Mr. SCHERER. Radio operator. And did you serve outside the continental United States?

Mr. SAMTER. Yes, sir.

Mr. SCHERER. Where?

Mr. SAMTER. In Europe.

Mr. SCHERER. And where did you live immediately prior to your service in the Army? What was your home residence?

Mr. SAMTER. New York City.

Mr. SCHERER. While you were in the Armed Forces of the United States serving as a radio operator, were you a member of the Communist Party?

(The witness conferred with his counsel.)

Mr. SAMTER. I decline to answer that on the same grounds as previously stated.

Mr. SCHEER. I have [illegible]

The CHAIRMAN. The w[illegible] A[illegible]

Mr. TAVENNER. Mr. Zack K[illegible]

Will you raise your right hand, p[illegible]

Do you swear the testimony you are [illegible] the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KRETHEOTIS. Yes, s[illegible]

TESTIMONY OF JACK (ZACK) KRETHEOTIS, ACCOMPANIED BY COUNSEL, DAVID P. STANTON

Mr. TAVENNER. Will you state your name, please?

Mr. KRETHEOTIS. Jack Kretheotis.

Mr. TAVENNER. Will you spell your name?

Mr. KRETHEOTIS. K[illegible]

Mr. TAVENNER. Did you say "Jack"? Excuse me, I didn't understand your first name.

Mr. KRETHEOTIS. Yes.

Mr. TAVENNER. Jack?

Mr. KRETHEOTIS. Yes.

Mr. TAVENNER. I pronounced it as Zack. I don't know whether I was incorrect.

Mr. KRETHEOTIS. That is [illegible]

Mr. TAVENNER. Which is the legal name, Jack or Zack? But your correct name is Zack?

Mr. KRETHEOTIS. That is a name that I have used for many, many years.

Mr. TAVENNER. What is your correct name?

Mr. KRETHEOTIS. At the present time it is Jack Kretheotis.

Mr. TAVENNER. What other name have you used?

(The witness conferred with his counsel.)

Mr. KRETHEOTIS. I used the name Zack. In fact, I have used that name, yes.

Mr. TAVENNER. What other name have you used?

(Witness conferred with his counsel.)

Mr. KRETHEOTIS. Sir, on advice of counsel, I respectfully decline, first, under the freedom of speech, freedom of the press, and right to assemble peacefully clauses of the first amendment and Constitution of the United States.

The CHAIRMAN. I direct you to answer the question as to what your right name is.

(The witness conferred with his counsel.)

Mr. KRETHEOTIS. Sir, I respectfully decline to answer, first, under the freedom of speech, freedom of press, right to assemble peacefully clauses of the first amendment to the Constitution of the United States; second, the question does not appear to me to be pertinent to any subject the investigation of which was authorized by the Act of Congress creating this committee; third, the question does not appear to me to be pertinent to the subject of inquiry as announced prior to the commencement of this hearing; and fourth, under the self-incrimination clause of the fifth amendment of the Constitution of the United States.

The CHAIRMAN. Do you think you would be prosecuted criminally if you told us what your name is?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated, sir.

The CHAIRMAN. All right.

Mr. TAVENNER. You stated that your nickname is Jack, that you sometimes have been known as Zack, and that is an indication that you are also known by some other name. Now, tell this committee what that name is. It is a preparatory question. It is a matter of identification.

Mr. KRETHEOTIS. I decline to answer, sir, for the reasons already stated.

Mr. SCHERER. I ask that you direct the witness to answer.

The CHAIRMAN. You are directed to answer the question.

Mr. KRETHEOTIS. I decline to answer for the reasons already stated.

Mr. TAVENNER. It is noted that you are accompanied by counsel. Will counsel please identify himself?

Mr. STANTON. I wondered if you would get around to me.

Mr. TAVENNER. If we could find out the name of your witness we would.

Mr. STANTON. All right. Now you know him.

Mr. TAVENNER. Now, if you would give us your name, sir.

The CHAIRMAN. Your right name.

Mr. STANTON. My right name. Stanton is my name. David P. Stanton, a lawyer from Gary.

Mr. TAVENNER. When and where were you born, Mr. Kretheotis?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated.

Mr. TAVENNER. Are you a citizen?

Mr. SCHERER. Just a moment. I think we ought to have a direction there.

The CHAIRMAN. You are directed to answer the question.

Mr. SCHERER. You understand, Witness, when the chairman directs you to answer the question it means that the committee refuses to accept the reasons you advance for not answering the question?

Mr. KRETHEOTIS. Sir, I decline to answer for the reasons that I already stated.

Mr. TAVENNER. Have you served in the Armed Forces of the United States?

Mr. KRETHEOTIS. I decline to answer, sir.

Mr. SCHERER. I ask you direct the witness.

The CHAIRMAN. You are directed to answer the question.

Mr. KRETHEOTIS. I decline to answer for the reasons already stated, sir.

Mr. SCHERER. How could it possibly incriminate you to tell us whether you served in the Armed Forces of the United States?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated, sir.

Mr. TAVENNER. Where do you now reside?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated, sir.

Mr. TAVENNER. Have you at any time within the past 5 years been a member of an organized unit or group of the Communist Party within the steel industry in Gary?

Mr. KRETHEOTIS. I decline to answer, sir, for the reasons already stated.

Mr. TAVENNER. Did you state, as among your reasons for refusing to answer, that you relied upon the fifth amendment?

Mr. KRETHEOTIS. That is right.

Mr. TAVENNER. Do you honestly believe that to answer that question might tend to incriminate you?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated.

Mr. TAVENNER. Are you now employed as a steel worker by U. S. Steel?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated, sir.

Mr. SCHERER. I request that the chairman direct the witness to answer.

The CHAIRMAN. You are directed to answer that question. How could that possibly incriminate you?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated.

Mr. SCHERER. Mr. Chairman, it is obvious the witness is invoking the fifth amendment improperly to that question, and at least this member of the committee is of the opinion that he is in contempt.

Mr. TAVENNER. Have you at any time served as a member of the Steel Section of the Communist Party in Gary?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated, sir.

Mr. TAVENNER. Were you a member of the Communist Party and, as a Communist Party member, identified with a unit organized within steel in 1950?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated, sir.

Mr. TAVENNER. Have you been a member of the Communist Party at any time within the last 2 years?

Mr. KRETHEOTIS. I decline to answer for the reasons already stated.

Mr. TAVENNER. Are you a member of the Communist Party now?

Mr. KRETHEOTIS. I decline to answer.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Have you any questions, Mr. Scherer?

Mr. SCHERER. No.

The CHAIRMAN. There are no further questions. You are excused. This committee will recess for five minutes.

(Brief recess.)

The CHAIRMAN. The committee will be in order.

Call your next witness, Mr. Tavenner.

Mr. TAVENNER. Mr. Joseph E. LaFleur, will you come forward, please?

The CHAIRMAN. Will you raise your right hand, please, Mr. LaFleur?

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Mr. LAFLEUR. Yes, sir.

The CHAIRMAN. Thank you. Have a seat, Mr. LaFleur.

TESTIMONY OF JOSEPH E. LaFLEUR

Mr. TAVENNER. What is your name, please, sir?

Mr. LAFLEUR. Joseph E. LaFleur.

Mr. TAVENNER. Could you spell your last name?

Mr. LaFLEUR. LaFleur.

Mr. TAVENNER. Mr. LaFleur, it is the practice of this committee to advise all witnesses that they have a right to have counsel with them during the course of their testimony, if they so desire. You have that right, the right to have counsel.

Mr. LaFLEUR. I need no counsel.

Mr. TAVENNER. When and where were you born, Mr. LaFleur?

Mr. LaFLEUR. I was born in the upper peninsula of Michigan in a town called Schaffer, Mich.

Mr. TAVENNER. The date of your birth?

Mr. LaFLEUR. April 1, 1914.

Mr. TAVENNER. Where do you now reside?

Mr. LaFLEUR. I reside at 760 Harrison, Gary, Ind.

Mr. TAVENNER. How long have you lived in Gary, Ind.?

Mr. LaFLEUR. It would be approximately 24 years this year.

Mr. TAVENNER. What has been your educational background?

Mr. LaFLEUR. My educational background is grade school, 2 years of high school, and self education.

Mr. TAVENNER. You came to Gary in what year?

Mr. LaFLEUR. 1936.

Mr. TAVENNER. What has been your principal employment in Gary since that time?

Mr. LaFLEUR. My principal employment has been approximately a year with Montgomery Ward and the rest of the time with U. S. Steel.

Mr. TAVENNER. In what plant of U. S. Steel are you employed?

Mr. LaFLEUR. It is known as the Sheet and Tin Mill.

Mr. TAVENNER. Are you employed there now?

Mr. LaFLEUR. Yes, sir.

Mr. TAVENNER. Mr. LaFleur, were you ever a member of the Young Communist League?

Mr. LaFLEUR. Yes, sir. I was.

Mr. TAVENNER. When was that, Mr. LaFleur.

Mr. LaFLEUR. Approximately the better part of 1937.

Mr. TAVENNER. Was that in Gary, Ind.?

Mr. LaFLEUR. Yes, sir.

Mr. TAVENNER. How long were you a member?

Mr. LaFLEUR. As indicated, approximately a year.

Mr. TAVENNER. Approximately a year?

Mr. LaFLEUR. Yes, sir.

Mr. TAVENNER. So that if you became a member in 1937 you dropped out either in that year or 1938?

Mr. LaFLEUR. The latter part of the year; yes, sir.

Mr. TAVENNER. Did you at some later time become affiliated with the Communist Party itself?

Mr. LaFLEUR. Yes, sir.

Mr. TAVENNER. What were the circumstances under which you became associated with the Communist Party after having dropped out of the Young Communist League?

Mr. LaFLEUR. Well, the circumstances were that the Federal Bureau of Investigation was interested in getting a man that would go into the Communist Party knowing his way around.

Mr. TAVENNER. Excuse me. There is a little noise in the heating system. If you will speak a little louder, please, it is a little hard to hear you.

Mr. LAFLEUR. Excuse me.

The Federal Bureau of Investigation was interested in getting a man to go into the Communist Party ranks, with which I was familiar, and to give a factual account of what went on in Communist ranks.

Mr. TAVENNER. As a result of that, were arrangements made for you to enter the Communist Party and report to the Federal Bureau of Investigation?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. What year did that occur?

Mr. LAFLEUR. That occurred approximately the spring of '42 or earlier.

Mr. TAVENNER. Will you tell the committee what gave you an opportunity to actually get into the Communist Party? Not the details of how it was managed, but what gave you the opportunity?

Mr. LAFLEUR. The opportunity, circumstances were such that I could easily get back in, knowing my way around in Communist circles, by having belonged to the Y.C.L., there was a recruiting group going on at that time.

Mr. TAVENNER. So you permitted yourself to be recruited?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Do you recall at this time the name of any individual who was active in encouraging you to subscribe to membership?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Who was that?

Mr. LAFLEUR. Two of the brothers of Malis family and Tony Burgess, now deceased.

Mr. TAVENNER. What members of the Malis family are you referring to?

Mr. LAFLEUR. I am referring to Cash, Chris Malis, and I am not certain on the other one, but there was another one.

Mr. TAVENNER. Cash. Now I want to get that of record.

Mr. LAFLEUR. Cash is a nickname.

Mr. TAVENNER. And his real name is Chris?

Mr. LAFLEUR. Chris.

Mr. TAVENNER. Malis. How do you spell Malis?

Mr. LAFLEUR. M-a-l-i-s.

Mr. TAVENNER. As a result of the talk that you had with those persons, did you become enrolled in the Communist Party?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. At that time you were working with

Mr. LAFLEUR. I was working in the Steel and Tin mill.

Mr. TAVENNER. What group of the Communist Party were you assigned to when you first became a member?

Mr. LAFLEUR. Well, at that time it was just an organizational basis, like a big community setup; and I was immediately assigned to literature director or agent.

Mr. TAVENNER. You became literature director immediately after becoming a member?

Mr. LAFLEUR. Yes, sir, almost immediately.

Mr. TAVENNER. What was the general nature of your duties as literature director?

Mr. LAFLEUR. The nature of my duties was to distribute literature, make it available at party meetings—in the main private party meetings—and mass meetings and to talk on either.

Mr. TAVENNER. When you speak of literature, you are speaking of Communist Party documents and leaflets and pamphlets?

Mr. LAFLEUR. Exclusively.

Mr. TAVENNER. And books?

Mr. LAFLEUR. Exclusively.

Mr. TAVENNER. I would like to know what other official positions you had within the Communist Party.

Mr. LAFLEUR. Shortly after, I was appointed on the sustaining fund committee.

Mr. TAVENNER. What is the sustaining fund committee?

Mr. LAFLEUR. The sustaining fund committee is funds collected from regular members, Communists, to sustain, in the main, the section organizer and the organization branches and so forth.

Mr. TAVENNER. To pay the salaries of the functionaries?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. How long did you serve on that committee?

Mr. LAFLEUR. I held that almost till—that is, the sustaining fund committee job—almost till, oh, I would say, roughly '46.

Mr. TAVENNER. Did you hold any other positions in the Communist Party?

Mr. LAFLEUR. In 1946, that is, the fall of '46, I was elected branch chairman of the community branch.

Mr. TAVENNER. Now, the community branch.

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Well, I will ask you a little more about the organization setup later.

You were chairman of the community branch about how long?

Mr. LAFLEUR. Approximately a year from '46 to the latter part of '47.

Mr. TAVENNER. Did you hold any other positions?

Mr. LAFLEUR. No, sir. That was about it, with the exception of leadership committees, county board, county council, and stuff like that.

Mr. TAVENNER. I think it might be well for you to describe the organizational setup of the Communist Party here, both in the City of Gary and in Lake County, just what the organizational setup of the Communist Party was.

Mr. LAFLEUR. Well, basically, in its simplest form, they had a County Section, what was known as a County Section, and a Community Section, and although they made many organizational changes it remained basically the same. Steel was included in the County Section, all the steel mills of the area.

Mr. TAVENNER. The steel mills were in the County Section?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. So that the Steel Section and the County Section were virtually the same?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Known as the same thing?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. How many different units or groups were there in the Steel Section of the Communist Party?

Mr. LAFLEUR. You mean steel mills, sir?

Mr. TAVENNER. Yes.

Mr. LAFLEUR. Well, the Big Mill, the Sheet and Tin——

Mr. TAVENNER. Wait a minute. Not so fast. The Big Mill?

Mr. LAFLEUR. Yes.

Mr. TAVENNER. Yes.

Mr. LAFLEUR. Sheet and Tin.

Mr. TAVENNER. That is where you worked.

Mr. LAFLEUR. Yes. Youngstown, Inland.

Mr. TAVENNER. Inland?

Mr. LAFLEUR. Inland Steel.

Mr. TAVENNER. Yes.

Mr. LAFLEUR. And maybe one more. I can't think of it at the moment.

Mr. TAVENNER. Then you spoke of the Gary section, the City Section.

Mr. LAFLEUR. The City Section mainly was other workers that worked out of steel, waiters, waitresses, business people, and even outside of Gary, like Griffith, a small town outside that was included in the community setup.

Mr. TAVENNER. How long a period of time were you active in the Communist Party in behalf of the Federal Bureau of Investigation?

Mr. LAFLEUR. As near as I can place it, it was 10 years.

Mr. TAVENNER. That would be from 1942 then to approximately 1952.

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. I will ask you a little bit later about the circumstances which necessitated your getting out of the Communist Party.

Now, we are considering here at this hearing testimony which will be of some value to the committee in determining just what tactics were used by the Communist Party in basic industry. That is the principal thing that we are interested in. And then the extent and the character and the objects of the Communist propaganda within the steel unions. What can you tell the committee from your own experience in the Communist Party about the interests of the Communist Party in the establishment of Communist units within steel?

Mr. LAFLEUR. I understood even during the war years when Howard Lawrence was section organizer and being the leading figure in the Communist community, he made it very plain that the concentration should be on unions, where there is a large number of members and they could gain control of these unions by intensive work. The main theme was recruitment: recruit and make these members Communists, that was basic.

Mr. TAVENNER. Was that plan carried out here of centering upon the organization of men within the steel unions?

Mr. LAFLEUR. Yes, sir. It was carried out to a large extent in the Big Mill and the other mill outside the Gary area. In Sheet and Tin they were not too successful.

Mr. TAVENNER. Can you recall at this time what the usual membership of the Communist Party was within the steel unions at any

one time? Necessarily, it would fluctuate, from time to time, with different members. But what was the normal membership of the Communist Party in steel while you were in steel?

Mr. LaFleur. That would include just a County Section.

Mr. Tavenner. That is while you were in the Communist Party?

Mr. LaFleur. I would place it at 60 members, that is, dedicated members, that is, I am not including the average rank-and-file in that. It would have been much higher.

Mr. Tavenner. Were many of those Communist Party members in steel active in union affairs?

Mr. LaFleur. Yes, sir. At least, by their own word they were. We had meetings of all sorts. We had to make proposals and perform certain tasks and follow-up meetings after that. I was quite certain that these people were Communists. I had seen all the evidence, that is, mainly, the facts that the FBI was interested in. They were not interested in my dreaming up anything. I reported what I had seen, and they were actually Communists, all of them.

Mr. Tavenner. Now, among this group of Communist Party members who were employed in the steel industry, were there a number of young men?

Mr. LaFleur. Yes, sir.

Mr. Tavenner. Do you know where those young men came from?

Mr. LaFleur. I understood some came from New York and other parts, and they appeared approximately at the same time.

Mr. Tavenner. When those young men came, how did it happen that they became identified with the Communist Party if they came in here as strangers?

Mr. LaFleur. They weren't strangers to me. They were Communists when they came here.

Mr. Tavenner. Did they identify themselves immediately with Communist Party activities upon arriving here?

Mr. LaFleur. Immediately. There was no need for subterfuge inside the Communist meetings.

Mr. Tavenner. One of the witnesses on the stand here a little while ago was a man by the name of Samter——

Mr. LaFleur. Yes, sir.

Mr. Tavenner. Who came here from New York in 1949. Can you tell this committee from your own personal knowledge whether he was a member of the Communist Party?

Mr. LaFleur. He certainly was. I reported to the FBI very definitely that I even seen his party card, and there happened to be a recruiting drive on at that time, too.

Mr. Tavenner. When he came here, how soon after his arrival was it that he became identified with Communist Party activities?

Mr. LaFleur. Practically the same week.

Mr. Tavenner. What relative position did he have in the Communist Party? I mean was he active or inactive, passive, or how would you describe his activities?

Mr. LaFleur. He was soon put in charge of a group and at one time even trying to lead or induce the Sheet and Tin Mill group to become active and function.

Mr. Tavenner. Were these bright young men, who came from the colleges in the East to take up more or less menial jobs in labor, active in the labor organization?

Mr. LaFleur. Yes, sir.

Mr. Tavenner. Were those activities in the labor organization discussed and passed on by the Communist Party in its meetings?

Mr. LaFleur. It certainly was. They were instructed upon the meetings, and I might say at times browbeaten for a little more action. A lot of things they failed to do.

Mr. Scherer. That they failed to do within the union, do you mean?

Mr. LaFleur. Yes, sir.

Mr. Scherer. In carrying out Communist Party policy?

Mr. LaFleur. Yes, sir; Communist tasks of all sorts.

Mr. Scherer. What was this man's name you referred to, Samton?

Mr. LaFleur. Samter.

Mr. Tavenner. Samter.

Mr. Scherer. Was he still a member of the party when you left it?

Mr. LaFleur. Yes, sir; he was.

Mr. Scherer. In 1952?

Mr. LaFleur. Approximately '52, that is, some part of '52.

Mr. Tavenner. Now, let us go for a moment to the Gary section or the City Section of the Communist Party. Just for purposes of general knowledge, how strong was that group in numbers?

Mr. LaFleur. Being the branch chairman, I could be quite certain as to how many members they had. These were not people that were receiving Daily Workers and going out and saying they were Communists. They were actually dues-paying Communists. I had seen most of their books, their party books. At one time I held a list with the party book numbers. It numbered about 30 to 35 as near as I can remember.

Mr. Tavenner. How is it that you as an employee in the tin and—what is it?

Mr. LaFleur. Sheet and tin.

Mr. Tavenner. Sheet and tin plant were selected for the chairmanship of the branch in the City of Gary, which was a neighborhood branch or community branch, as I understand.

Mr. LaFleur. That is right, sir. As I indicated before, the Sheet and Tin Mill unit was not functioning. They needed somebody to take over the leadership in the community branch. I was available. The best description—the excuse I can give for those who refused to function was they didn't want to stick their necks out, and I was chosen—elected chairman or president of the Community Branch.

Mr. Tavenner. Now, you held that position for about a year?

Mr. LaFleur. Yes, sir.

Mr. Tavenner. And that was around 1946 as I understand.

Mr. LaFleur. The latter part of '46 into the latter part of '47, as near as I can remember.

Mr. Tavenner. Yes. Now, did any change occur which required you to go back to units in steel?

Mr. LaFleur. Yes, sir. Later on it did.

Mr. Tavenner. What was that?

Mr. LaFleur. The change of organizer, the sharpening of the issues that they called the class struggle; and they made plans to push people whether they wanted to or not, push the comrades available.

Mr. Tavenner. The program was being put into effect at that time of concentrating in industry, was it not?

Mr. LaFleur. Yes, sir. That is, in the main. That was the main objective.

Mr. Tavenner. I understood you to say that you served in the capacity of a member of the section.

Mr. LaFleur. Yes, sir.

Mr. Tavenner. Just what is that, the section? Isn't that just the next level higher above the cells or groups?

Mr. LaFleur. Yes, sir.

Mr. Tavenner. The next level is the section level?

Mr. LaFleur. Yes, sir.

Mr. Tavenner. Who were the members of the section?

Mr. LaFleur. Of the Community Section or the County Section?

Mr. Tavenner. Well, of the steel?

Mr. LaFleur. Of steel?

Mr. Tavenner. I am not speaking of names, but how were the members chosen or selected who were members on the section level?

Mr. LaFleur. Mainly they were steelworkers. They had to be militant. They belonged to the section.

Mr. Tavenner. Was there a representative from each one of the units that became a member of the Steel Section? Was it organized in that form?

Mr. LaFleur. Yes, sir. There were numerous reorganizations. It is pretty hard to describe without referring to the basic structure.

Mr. Tavenner. What type of activity did those engage in who were members on the section level?

Mr. LaFleur. Well, first and foremost, recruiting, peddling of propaganda by their papers, literature, and so forth and, of course, fighting for the issues on the union floor, such as during the war the no-strike pledge, and after the war the work stoppages and then strikes; and some political questions, like the drive for Henry Wallace, the third-party movement, and so on.

Mr. Tavenner. Do you recall what position was taken with regard to the Marshall Plan?

Mr. LaFleur. The Marshall Plan was discussed at length and propagandized all out of proportion. Needless to say they did not like the Marshall Plan.

Mr. Tavenner. Did the Communist Party endeavor to influence the local unions to take a position against the Marshall Plan?

Mr. LaFleur. Yes, sir. I do not know how successful they were. They talked about it at length. I cannot indicate what their success was.

Mr. Tavenner. Was it part of the program of the Communist Party, acting through the section members, to advance various programs of the Communist Party in the unions which had to do with international affairs and which were not related to union affairs at all?

Mr. LaFleur. Yes, sir.

Mr. Tavenner. That was part of the propaganda plan?

Mr. LaFleur. Yes, sir. The outstanding issue during the war was the no-strike pledge. We were allies of Russia at the time. Their main loyalty was the Russians. To hear them propagandize at times, you would think they lived in Russia, not in the United States. They played that up big.

Mr. TAVENNER. What sort of an organization was there next above the section level?

Mr. LAFLEUR. The state level.

Mr. TAVENNER. Was there anything intermediate between the section and the state?

Mr. LAFLEUR. I don't understand what you mean.

Mr. TAVENNER. Was there a County Committee?

Mr. LAFLEUR. Oh, yes; there was a County Committee, yes sir, County Board, County Committee. They called it by various names.

Mr. TAVENNER. Did you serve on it?

Mr. LAFLEUR. Yes, sir, although at times when not serving I was invited to attend meetings.

Mr. TAVENNER. How frequently did you attend meetings of the Steel Section——

Mr. LAFLEUR. How frequently?

Mr. TAVENNER. Of the Communist Party.

Mr. LAFLEUR. How frequently?

Mr. TAVENNER. Yes, how frequently. And over what period of time?

Mr. LAFLEUR. Aside from 1946, when I served in the community branch, practically the entire time—I take that back—for the latter 2 years—approximately 7 years I had access to all the committees.

Mr. TAVENNER. That would be up to about 1950.

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. That you had access to the meetings.

Mr. LAFLEUR. Yes, sir

Mr. TAVENNER. How frequently were these meetings held?

Mr. LAFLEUR. They would average once every 2 weeks, I would say.

Mr. TAVENNER. Would you say that those who were members on a section level were leaders in the Communist Party?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. I would like for you to tell the committee who were prominent, that is, the names of persons who were prominent on a section level of the Communist Party during the period from 1946 or '47 through to 1950, who met with you in those meetings. But before answering that question, may we have a few minutes recess?

The CHAIRMAN. Yes. The committee will stand in recess for 5 minutes.

(Brief recess.)

The CHAIRMAN. The committee will be in order, please.

Mr. TAVENNER. Mr. LaFleur, do you have in mind the question that I asked you?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Now, in answering that question, I would be glad to know about the activities of the individuals that you mentioned. It will serve as a means of further identification of the persons whom you will name.

Mr. LAFLEUR. Yes, sir. Kretheotis, Jack Kretheotis.

Mr. TAVENNER. Jack Kretheotis. The person who would not give his full name here before the committee a few minutes ago.

Mr. LAFLEUR. Yes, sir. He was known in party circles as Jack Kreth.

Mr. TAVENNER. What?

Mr. LAFLEUR. Kreth. K-r-e-t-h.

Mr. TAVENNER. Jack Kreth.

Mr. LAFLEUR. Kreth. He just shortened his name.

Mr. TAVENNER. He served on the section level?

Mr. LAFLEUR. Yes, sir. He was very articulate at Communist conventions, at least 2 held here in Gary.

Mr. SCHERER. More articulate than he was here?

Mr. LAFLEUR. Sir?

Mr. SCHERER. I say he was more articulate in Communist conventions than he was here.

Mr. LAFLEUR. Yes, sir. Very vocal in private Communist meetings, and, from all indications, proof positive he carried out the work of the Communist Party.

Mr. TAVENNER. He was in a position to have given this committee information if he had desired to do so?

Mr. LAFLEUR. Oh, yes, sir.

Mr. TAVENNER. Very well.

Mr. SCHERER. I want to ask one question. He was still an active Communist at the time you left the party in 1952?

Mr. LAFLEUR. Yes, sir, undoubtedly. Robert Kates.

Mr. TAVENNER. Robert Kates. Did he testify today?

Mr. LAFLEUR. Yes, sir, he testified today. He was also very vocal. He was also very vocal; and if you take their word, they succeeded a lot in their objectives. They worked at the steel mill.

Mr. TAVENNER. Do you recall anything about the circumstances of his coming here to Gary?

Mr. LAFLEUR. Well, the time was approximately around 1947, I would put it, and he came with, as I termed it, the functioning of the branches, the units, various organizational setups that they had were weak and they filled in.

Mr. TAVENNER. These bright young men strengthened the weak units of the Communist Party?

Mr. LAFLEUR. Yes, sir; with particular emphasis on steel.

Mr. TAVENNER. Do you know exactly what year it was when he came here?

Mr. LAFLEUR. I just surmise it, sir. He probably came before that.

Mr. TAVENNER. You don't know the date on which he came?

Mr. LAFLEUR. No, I don't sir.

Mr. SCHERER. Did you know at the time they came that they had the educational background that has been developed here this morning?

Mr. LAFLEUR. Yes, sir. That was very apparent. It was apparent through the vocability in discussing things and the understanding they had as Communists.

Mr. TAVENNER. Did they exercise leadership in the Communist Party?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. These young men, these bright young men?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Like Kates?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. And in the union?

Mr. LAFLEUR. Yes, sir. They were told that their main task was in the mill units.

Mr. SCHERER. Were you aware of the fact that they did not, at the time they came here, disclose in their applications for employment to the employer that they had the educational training that they had? Were you aware of that at the time?

Mr. LAFLEUR. No, I was not, sir.

Mr. SCHERER. You learned that subsequently?

Mr. LAFLEUR. Well, I guessed it at the time. I learned it for sure subsequently.

Mr. SCHERER. You guessed that a man with the educational qualifications that these men apparently had would not be working on an assembly line?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Or, one of them indicated in his application this morning, an electrician's helper.

Mr. LAFLEUR. Yes, sir. I am quite sure it was right around '47 or '48 that that party came to Gary.

Mr. TAVENNER. Very well. Would you proceed, please.

Mr. LAFLEUR. Yellin.

Mr. TAVENNER. Yellin?

Mr. LAFLEUR. Yellin.

Mr. TAVENNER. He has also testified here.

Mr. LAFLEUR. Yes, sir. He was very active in the party. I don't recall any unusual characteristics of his work. He was very well educated. It was apparent, and it bolstered the forces here that were very weak.

Mr. TAVENNER. Was he a member of the Communist Party when you left it?

Mr. LAFLEUR. Yes, sir.

Mr. SCHERER. Let me refresh my own recollection, Mr. Tavenner. Wasn't Yellin the man who went to Michigan University?

Mr. TAVENNER. Yes, sir.

Mr. SCHERER. He changed from an arts course to an engineering course at Michigan?

Mr. TAVENNER. Yes.

Mr. SCHERER. He is the one that studied calculus.

Mr. TAVENNER. And had an "Excellent—A" rating on many difficult engineering subjects.

Mr. SCHERER. And he is the one who came to work as an electrician's helper. I remember that.

Mr. TAVENNER. Yes, sir. And he had transferred to Michigan from the City College of New York.

Mr. LAFLEUR. William Young was another man that was a Commie.

Mr. TAVENNER. William Young?

Mr. LAFLEUR. Yes, sir. He was also—well, he had been an old-line party member for a long time, for the good part of the war and up to '50; and he was instrumental in reporting at closed Communist meetings about things that went on in the union, the complete proposals and plans of the union, and so on and so forth, the policy committee plans, wage committee plans, and so on.

Mr. TAVENNER. Was he a member when you left the party?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Very well sir.

Mr. LAFLEUR. Joe Norrick.

Mr. TAVENNER. Would you spell the last name?

Mr. LAFLEUR. N-o-r-r-i-c-k.

Mr. TAVENNER. He was a member on the section level?

Mr. LAFLEUR. Yes, sir. All those I am mentioning are on a sectional level. I will indicate otherwise when I come to, or I think of, any member.

He was very vocal at closed party meetings and he carried on the work of the Communist program very faithfully, and nothing outstanding.

Joe Gyurko.

Mr. TAVENNER. Would you spell the last name?

Mr. LAFLEUR. G-y-u-r-k-o, I think. Comrade Joe, as I analyzed him, was more or less the rank-and-file type, and he carried on the usual job that the rank and file has, distribution of leaflets, and so on.

Mr. TAVENNER. You would not classify him as one of the leaders in this work?

Mr. LAFLEUR. No, sir; not in the section level. John Sargent. He was very ambitious, a very militant leader, as I remember him.

Mr. SCHERER. Did he work in the steel pool?

Mr. LAFLEUR. Yes, sir.

Mr. SCHERER. And active in the steel union?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. What about his regularity in attendance at these meetings on a section level that you attended?

Mr. LAFLEUR. Quite good regularity, but I did not see him too often because my work prevented me. It was just incidental that we didn't run into each other too often. John Gates.

Mr. TAVENNER. Was Sargent a member of the Communist Party when you left it?

Mr. LAFLEUR. To my knowledge, he was. John Gates. He was quite able. A Negro. He was induced by Howard Lawrence to join the party, as far as I know, and he carried out quite a bit of work.

Mr. TAVENNER. Who was Howard Lawrence?

Mr. LAFLEUR. Howard Lawrence was the section organizer during the war years up to '47.

Mr. TAVENNER. He was a Communist Party functionary?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Devoted his full time to organizational work?

Mr. LAFLEUR. Yes.

Mr. TAVENNER. Very well.

Mr. SCHERER. Where is Lawrence today, if you know?

Mr. LAFLEUR. I last heard he was in California, sir. There was Nick Migas.

Mr. TAVENNER. Would you spell the last name?

Mr. LAFLEUR. M-i-g-a-s.

Mr. SCHERER. Going back to Lawrence, do you know what Lawrence is doing today?

Mr. LAFLEUR. He left Gary under a cloud. He disagreed with a lot of the party people, and they didn't expel him, but he left here.

Mr. SCHERER. You don't know what his occupation is as of this time?

Mr. LAFLEUR. No, sir. Then of course the 5——

Mr. TAVENNER. Just a moment. About Nick Migas.

Mr. LAFLEUR. Oh.

Mr. TAVENNER. A person by the name of Nick Migas was identified by——

Mr. LAFLEUR. Lautner.

Mr. TAVENNER. John Lautner this morning.

Mr. LAFLEUR. Yes, and he was correct. I was going to say he was on a higher level, and he went all the way in the Communist infiltration. He had a lot of trouble with the steel union and he became under a cloud. Of course, that helped the Communist Party get hold of him for his full services.

Mr. TAVENNER. Yes. We already heard from Mr. Lautner that Nick Migas was sent in here by the Communist Party——

Mr. LAFLEUR. Yes.

Mr. TAVENNER. For definite Communist Party purposes.

Mr. LAFLEUR. Yes. I might mention in that connection Joe Chandler.

Mr. TAVENNER. Joe Chandler. How well did you know Joe Chandler?

Mr. LAFLEUR. Pretty well, and he stayed here several years, and he, too, was on a higher level. I agree with Mr. Lautner because I seen it first hand. He worked in the union quite at length and he was sent to Washington at one time on a lobbying job and he had the party forces under him on that lobbying job, as I understand, on the union business.

Mr. TAVENNER. Were you acquainted with the wife of Joe Chandler?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. What was her position in the Communist Party, if any?

Mr. LAFLEUR. She was a functionary of the Community Branch when I was president. I don't recall the position she held, but she held something like secretary or educational director or something like that.

Mr. TAVENNER. Very well.

Mr. LAFLEUR. Nick Busic.

Mr. TAVENNER. Busic. He was a witness here.

Mr. LAFLEUR. Yes.

Mr. TAVENNER. This afternoon.

Mr. LAFLEUR. He was a member in 1950 or maybe further, to my knowledge, at the time. He was quite faithful at party meetings in carrying on the work of the Communist Party. No unusual other characteristics. Lawrence Meskimen. He didn't work in steel.

Mr. TAVENNER. Will you spell that name, please.

Mr. LAFLEUR. M-e-s-k-i-m-e-n.

He was also very articulate at party meetings of every sort and he worked in oil refineries. According to his own word, he was quite successful on all phases of their work, recruiting and so on and so forth.

Mr. SCHERER. Do you know where he is today?

Mr. LAFLEUR. I understand he is still around. I never heard any thing different, sir. I wouldn't know.

Mr. SCHERER. Do you mean around Gary?

Mr. LAFLEUR. Yes, sir. Of course, there were the 5 Malis brothers.

Mr. SCHERER. Five what brothers?

Mr. LAFLEUR. Malis brothers, 5 Malis brothers.

Mr. TAVENNER. Were all 5 at one time or another members of a section group or on the section level?

Mr. LAFLEUR. No. Cash and Keg—that is, Cash, Chris Malis, and Keg, Albert Malis, were more or less on the section level that we are talking about. The other 2 and Vic, including Vic, the other two, I knew them as Sully and Sy, that would be Willard and Walter, respectively——

Mr. TAVENNER. Yes.

Mr. LAFLEUR. Were on a lower plane.

Mr. SCHERER. The Malis brothers. What did they do? What was their business?

Mr. LAFLEUR. They were steelworkers.

Mr. SCHERER. All steelworkers?

Mr. LAFLEUR. All steelworkers.

Mr. TAVENNER. Were you acquainted with the wife of Vic Malis?

Mr. LAFLEUR. Yes.

Mr. TAVENNER. What was her name?

Mr. LAFLEUR. I think it is Anne, although I have no other——

Mr. TAVENNER. Do you recall her last name?

Mr. LAFLEUR. No, sir.

Mr. TAVENNER. Before marriage?

Mr. LAFLEUR. No, sir; not at the moment.

Mr. TAVENNER. Will you proceed?

You have named the 5 Malises. Let me ask you this: Do you recall whether one of the Malises was involved here in an incident in which the American Flag was torn down and a Russian flag substituted for it?

Mr. LAFLEUR. Yes, I recall it. It came second hand to me.

Mr. TAVENNER. Then if it came second hand——

Mr. LAFLEUR. I have no first-hand information, no, sir. But I was aware of it at the time, though.

Mr. TAVENNER. All right. Will you proceed, please, with the names of any others that you can recall who served on the section level with you?

Mr. LAFLEUR. I mentioned Joe Chandler.

Mr. TAVENNER. Yes.

Mr. LAFLEUR. Arthur Daronatsy.

Mr. TAVENNER. Will you spell that name, please?

Mr. LAFLEUR. D-a-r-o-n-a-t-s-y, I think. He was, when I first knew him, in approximately '42, on the CIO County Council; and he had an interest as a comrade in all things pertaining to the infiltration of steel, non-strikes, so on and so forth. He attended party classes, for example, Marxism-Leninism, value of price and profit, Communist Manifesto. It was proof positive that he was a functioning Communist. In fact, he helped with the training and instruction of lower functioning comrades.

Mr. TAVENNER. Yes. Were there any other functionaries that attended these particular meetings with some regularity?

Mr. LAFLEUR. Yes. Katherine Hyndman was one.

Mr. TAVENNER. Who?

Mr. LAFLEUR. Katherine Hyndman.

Mr. TAVENNER. Would you spell the last name?

Mr. LAFLEUR. H-y-n-d-m-a-n.

Mr. TAVENNER. Mr. Chairman, our investigation shows that Katherine Hyndman was arrested on a deportation warrant on January 5,

1949, and that there was a final order of deportation issued on January 29, 1953, to send her to Yugoslavia, but Yugoslavia refused to accept her.

I mentioned that because in the bill now presented by you in the House and which has been referred to this committee, there is a section relating to the problem of countries that have refused to admit these deportees.

This is one of those incidents.

The CHAIRMAN. Of course, it might be a simple way to meet the situation by writing into the Foreign Aid Bill a provision that no part of the appropriation should be made to any country that fails to comply with the United States law. That would be a simple way to meet the problem.

Mr. TAVENNER. That would be particularly applicable as to Yugoslavia.

The CHAIRMAN. That is what I have in mind.

Mr. TAVENNER. Now, let me ask you this question: Was she actively engaged in Communist Party activities after her arrest in January of 1949?

Mr. LAFLEUR. Yes, sir. If I may explain, I don't mean to give the impression that she gave all of her talent to the steel units. She aided in that substantially. But she was on a higher plane and she was practically on a plane with, let us say, the section organizer, the highest political plane.

Mr. TAVENNER. That was even after she was under arrest?

Mr. LAFLEUR. Yes, sir. She was the organizational secretary, I know, up until '49.

Mr. TAVENNER. Yes. Do you have any personal knowledge of facts that would indicate that she is now one of the active organizers or active members of the party here in Gary?

Mr. LAFLEUR. Yes. When I left the party I had heard state organizers tell her that she was going to be the organizer when they had to leave. When the prosecution of the top 12 was taking place, Jim West left for the national coordinator, I believe you call it, or Midwest coordinator. I can say with positive note that she agreed to take over as organizer, as section organizer. They may have given it another name at the time, but it meant the same thing.

Mr. TAVENNER. Let us see if you can recall the names of any other persons who were on this section level group with you. Do you recall a person by the name of Lehrer?

Mr. LAFLEUR. Yes, he was.

Mr. TAVENNER. Lehrer. How do you spell the name?

Mr. LAFLEUR. It is spelled L-e-h-r-e-r.

Mr. TAVENNER. Leh[illegible]r.

Mr. LAFLEUR. I knew him as L-a-i-r, by that name.

Mr. TAVENNER. Yes.

Mr. LAFLEUR. He was the usual pretty conditioned Communist on a high level, section level.

Mr. TAVENNER. Was he one of the older men in the party or was he one of the young group that came in from the East?

Mr. LAFLEUR. I think he was one of the new ones that came in from the East.

Mr. TAVENNER. Was he still a member when you left the party?

Mr. LAFLEUR. No. I have to correct that. I am not sure whether he came from the East, but I am positive that I knew him. I will correct that statement.

Mr. TAVENNER. Do you recall whether he was a member when you left the party?

Mr. LAFLEUR. Yes, sir, he was.

Mr. TAVENNER. Do you recall a man by the name of Rebraca?

Mr. LAFLEUR. He was known to me as Louie or Owl Rebraca. I think his right name was Lazo, L-a-z-o, and he participated, I know, because I made reports regularly on him up until 1950.

Mr. TAVENNER. Are there any others that come to your mind at this time?

Mr. LAFLEUR. Not at the moment, sir.

Mr. TAVENNER. Now, I asked you about the functionaries that attended the meetings with you. Were there any higher functionaries from out of the State who attended and imparted the Communist Party line to your group?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Can you name some of them?

Mr. LAFLEUR. At different times on the national issues, such as the no-strike pledge during the war, Steve Nelson took a party whip and came to town and harangued us at least on what to do and what we should accomplish. And he remarked at one time, I remember vividly, that we should terrorize, if necessary, terrorize by most psychological effect, and that was done quite at length in Communist circles.

William Patterson.

Mr. TAVENNER. William Patterson?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Was he the chairman of the Civil Rights Congress?

Mr. LAFLEUR. He was at one time, I believe, sir. He told in private Communist meetings that we should be militant. I am trying to strike the exact meaning to bring across. He scolded us for backwardness in all tasks, union work and so on and so forth. He gave reasons why we should be more militant and told the fact that the Communist Party was the salvation of the United States. He told why he became a Communist, the main reason being that the two existing political parties in the United States, the Democrats and the Republicans, had failed to satisfy him, and he turned to communism for the answer. That is, in essence, the message he brought.

Mr. TAVENNER. Recalling very vividly his opposition to this committee in the course of its meeting in Detroit, back in 1952 or 1953, I only wish we had had that information at that time.

Are there any others that you can now recall?

Mr. LAFLEUR. Well, there were the state leaders, George Sandy and Elmer Johnson. There was—for the moment I can't think of the other person—Gil Green; Gilbert Green, to my mind, is the personification of the underground leader in America today, if we can take into consideration his record since the top 12 were prosecuted. He chided and harangued the Communists here for lack of action on all fronts.

Mr. SCHERER. Mr. Counsel?

Mr. TAVENNER. Yes, sir.

Mr. SCHERER. Wasn't Gil Green one of the many who were recently released by the Supreme Court rule?

Mr. TAVENNER. I would not like to state positively.

Mr. SCHERER. That is the reason I asked you.

Mr. LAFLEUR. There were others like Onda, O-n-d-a. They dealt in union circles on labor. There was Lightfoot, people like that.

Mr. TAVENNER. From Chicago?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Now, I would like to hear from you at this time the circumstances leading up to the termination of your work in the Communist Party.

Mr. LAFLEUR. Well, during the deportation hearings, various people here in Gary, namely, Katherine Hyndman, James MacKay, I was suspected of carrying information to the FBI. By process of elimination, they established that I could have been the undercover man for the FBI. I could see a change coming over. They were going into cells. They were practically underground at the time. Their whole attitude changed. They split into small circles and into cells, as low as 3 people, all suspecting one another.

Katherine Hyndman, in the course of her fight against deportation, helped to organize the CRC.

Mr. TAVENNER. Civil Rights Congress?

Mr. LAFLEUR. Civil Rights Congress, and we formed a chapter here. From her attitude and what she said at the time, I took it as a punishment that I was taken out of the steel unit, which hadn't functioned—and I might say here that I helped along in that direction, that it wouldn't function as long as I was in it—and I was put in the CRC. I was put back to literature director or secretary at the time. That is what they called it.

Mr. TAVENNER. Was she, herself, engaged actively in the work of the Civil Rights Congress at that time?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. So she kept you under pretty strict surveillance from then on, didn't she?

Mr. LAFLEUR. I was the one being watched.

Mr. TAVENNER. Was the membership of the Civil Rights Congress composed of members of the Communist Party?

Mr. LAFLEUR. Yes. There were some. I can recall Pat Taxel, Lemar Holstead, of course, myself, and Mrs. Hyndman, were Communists. I didn't deduce that from our work in the CRC. We met at Communist meetings. There were others that I can't recall at the moment.

Mr. TAVENNER. Did the Communist Party direct and control the activities of that organization?

Mr. LAFLEUR. Yes, sir, we were ordered what to do.

Mr. TAVENNER. While we are at this point, let me ask whether or not members of the Communist Party were assigned to do work in various front organizations or various organizations that were not fronts in an effort to infiltrate them, in addition to the labor unions.

Mr. LAFLEUR. Yes. One outstanding example that I can think of is that we were told to go into this organization to influence the members; and I want to say that they were unaware that this person was coming in, or persons, comrades. Mary Chandler and Ethel Strangel went into the League of Women Voters; and from their own stories, they influenced the organization to a certain extent. How far, how deep they went, I don't know.

Mr. TAVENNER. At least they endeavored to do it.

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Was an effort made to infiltrate other organizations in the area?

Mr. LAFLEUR. Yes, sir.

Of course IWO was practically run by the Communists, the Russian War Relief was run directly by Communists, the Peace Crusades they had, and so on. That is about it, sir, that I can recall at the moment.

Mr. TAVENNER. After you were placed in the Civil Rights Congress and taken out of your former work—let me ask you first about what year was that that you were put in the Civil Rights Congress and taken out of your former work?

Mr. LAFLEUR. Approximately 1950, the latter part of 1950 to '51.

Mr. TAVENNER. What occurred after that?

Mr. LAFLEUR. Well, as they would describe, the class struggle got tighter and tighter and it didn't exist outside of their own organization. The class struggle was in the Communist Party, and gradually I had to bow as gracefully as I could. I was no longer of any use to the Communist Party.

Mr. TAVENNER. Then you terminated your membership?

Mr. LAFLEUR. Yes, sir. I never terminated. I just dropped out. There is a saying that you never leave the Communist Party. You are expelled. I never was expelled.

Mr. TAVENNER. I would like to go back to one of these persons that you mentioned, Vic Malis.

Mr. LAFLEUR. Yes.

Mr. TAVENNER. Do you know of any special activity he engaged in, in addition to the attendance at party meetings and the work in the union?

Mr. LAFLEUR. Yes. I couldn't pin it down to the year, but he quit 14 years' seniority in the mill, 14 years' service to take over the Cooperative Restaurant at 1428 Broadway, and that was on orders of the Communist Party.

Mr. TAVENNER. Why was the Communist Party interested in having this man surrender his seniority in order to run a restaurant?

Mr. LAFLEUR. They wanted to keep a tight rein on that cooperative restaurant, and the main objective plainly was to keep that meeting hall, keep the meeting hall and also to control the workers there.

Mr. TAVENNER. You mean the Communist Party held its meetings there?

Mr. LAFLEUR. Yes, sir.

Mr. TAVENNER. Was the Communist Party having difficulty in finding a hall in which it could meet with proper secrecy?

Mr. LAFLEUR. I venture to say that they anticipated that, and the events proved that they had difficulty.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Have you any questions, Mr. Scherer?

Mr. SCHERER. I have no questions.

The CHAIRMAN. Mr. LaFleur, I am sure you do not realize fully how great has been your contribution to the preservation of those things that mean so much, not only to us Americans but to the world. People generally are not aware of the machinations of the Communists, nor were they aware in many of the countries which, through infiltration, are now behind the Iron Curtain.

I do not know how to begin to thank you. Your contribution may be as great as that of a division in the Army.

Mr. LAFLEUR. Thank you, sir.

The CHAIRMAN. Who knows, but you certainly have done a great service toward the preservation of this Republic that all of us do or should love.

Mr. LAFLEUR. Thank you.

The CHAIRMAN. And I thank you very much.

Mr. LAFLEUR. Thank you. My pleasure.

The CHAIRMAN. The committee will stand in recess until ten tomorrow morning.

(Whereupon, at 4:30 p. m., February 10, 1958, the subcommittee recessed, to reconvene at 10 a. m., Tuesday, February 11, 1958.)

INVESTIGATION OF COMMUNIST INFILTRATION AND PROPAGANDA ACTIVITIES IN BASIC INDUSTRY

(Gary, Ind., Area)

TUESDAY, FEBRUARY 11, 1958

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Gary, Ind.

PUBLIC HEARING

The subcommittee of the Committee on Un-American Activities met pursuant to recess, at 10 a.m. in the Council Chamber, Municipal Building, Gary, Ind., Hon. Francis E. Walter (chairman of the committee) presiding.

Committee members present: Francis E. Walter, of Pennsylvania (presiding), and Gordon H. Scherer, of Ohio.

Staff members present: Frank S. Tavenner, Jr., counsel, and Raymond T. Collins, investigator.

The CHAIRMAN. The subcommittee will come to order.

The custodian of the building has requested me to announce that smoking is not permitted. It is impossible to ventilate the room, and the fire hazard, of course, is considerable. So that I request you to refrain from smoking at this session.

Call your first witness.

Mr. TAVENNER. Mr. Robert Lehrer, will you come forward, please, sir.

The CHAIRMAN. Will you raise your right hand, please, sir?

Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God.

Mr. LEHRER. I do.

TESTIMONY OF ROBERT LEHRER, ACCOMPANIED BY COUNSEL, WILLARD J. LASSERS

Mr. TAVENNER. Will you state your name, please, sir?

Mr. LEHRER. Robert Lehrer.

Mr. TAVENNER. Will you spell your last name?

Mr. LEHRER. L-e-h-r-e-r.

Mr. TAVENNER. Lehrer. It is noted that you are accompanied by counsel.

Will counsel please identify himself for the record?

Mr. LASSERS. Yes, certainly. My name is William J. Lassers, 11 South LaSalle Street, Chicago, Illinois.

Mr. TAVENNER. When and where were you born, Mr. Lehrer?
Mr. LEHRER. November 6, 1925, in New Jersey, Stelton, N. J.
Mr. TAVENNER. Excuse me, I didn't understand where.
Mr. LEHRER. Stelton, New Jersey.
Mr. TAVENNER. Stelton, New Jersey?
Mr. LEHRER. Yes, sir.
Mr. TAVENNER. Where do you now reside?
Mr. LEHRER. 1073 Pierce Street, in Gary.
Mr. TAVENNER. How long have you lived in Gary?
(The witness conferred with his counsel.)
Mr. LEHRER. I refuse to answer that question and I would like to state my grounds.

I respectfully refuse to answer that question on the grounds that I need not do so under the first amendment and the Federal Due Process clause of the Constitution of the United States that the question under inquiry has not been properly defined, that the question is not pertinent to the question under inquiry, that the question is unrelated to any legislative purpose, that the resolution establishing the Committee on Un-American Activities is indefinite and vague, that the committee and this subcommittee are improperly constituted and lack jurisdiction of the subject matter.

I do not base my refusal to answer upon the privilege against self-incrimination of the fifth amendment of the Constitution of the United States, but do reserve every other ground, constitutional and otherwise, available to me.

Mr. TAVENNER. What other constitutional grounds do you rely on? You stated constitutional grounds in general. Let me make it more specific. Are you relying on the constitutional grounds set forth in the fifth amendment relating to self-incrimination testimony?
Mr. LEHRER. I think that is clear in my statement.
Mr. TAVENNER. Are you relying on the fifth amendment?
Mr. LEHRER. May I read again what I said?
Mr. TAVENNER. No. Just answer the question. Are you refusing to answer on the ground of the self-incriminatory clause of the fifth amendment?
(The witness conferred with his counsel.)
Mr. LEHRER. No. But I am relying on other parts of the fifth amendment.
Mr. TAVENNER. Mr. Chairman, it certainly is self-evident, the pertinency of the question as far as the period of residence of this witness in Gary is concerned, when the subject under inquiry relates to Communist Party activities in Gary. I believe it would need no explanation of the pertinency of the statement other than to state that.

So, unless the chairman thinks otherwise, I suggest that he be directed to answer.
The CHAIRMAN. Yes. I think that is correct. You are directed to answer that question.
(The witness conferred with his counsel.)

Mr. LEHRER. I decline to answer for the reasons previously stated.

Mr. TAVENNER. Are you an employee in the steel industry?

Mr. LEHRER. I refuse to answer that on the same grounds.

The CHAIRMAN. You are directed to answer that question.

Mr. LEHRER. I refuse to answer on the grounds previously stated.

Mr. SCHERER. Where are you employed?

Mr. LEHRER. I refuse to answer that question, too, on the same grounds.

Mr. SCHERER. I ask for a direction.

The CHAIRMAN. You are directed to answer the question as to where you are employed.

Mr. LEHRER. I refuse to answer that question on the grounds previously stated.

Mr. TAVENNER. Mr. Lehrer, you have stated that you are a resident of Gary. Let me ask you whether or not, during the period of time that you have been a resident of Gary, there has been practiced in the steel plants in Gary a colonization of young Communists from the eastern part of the country to this area.

Mr. LEHRER. I refuse to answer that question on the same grounds.

(The chairman and Mr. Tavenner conferred.)

Mr. TAVENNER. Were you present in the hearing room yesterday when the chairman made his opening statement?

(The witness conferred with his counsel.)

Mr. LEHRER. I refuse to answer that question, too, on the same grounds.

Mr. SCHERER. Now, Mr. Chairman, I ask you to direct the witness.

The CHAIRMAN. I direct that you answer the question whether or not you heard my opening statement. Certainly nobody is going to get in trouble for listening to that statement.

Mr. LEHRER. I refuse to answer on the grounds first stated.

Mr. TAVENNER. Were you present in the hearing room during the testimony of Mr. Lautner and Mr. LaFleur?

Mr. LEHRER. I refuse to answer that question, too, on the same grounds.

Mr. TAVENNER. Mr. Lehrer, I think I should advise you that the committee has received sworn testimony here at this hearing that it was the practice of the Communist Party, it was a Communist Party plan, to induce bright young men in various parts of the United States and in educational institutions, to break off from the completion of their education and go into basic industry for the purpose of strengthening the grass roots of the Communist Party in basic industry and to afford strong leadership to Communist Party groups which for one reason or another had become weakened.

Now, the committee has heard evidence that you came to Gary, Ind., and that you became identified with the Communist Party, and it is our purpose now to inquire from you as to the exact techniques used

by the Communist Party in sponsoring and putting into effect this plan that we call colonization.

Now, will you tell the committee, please, whether such a plan of colonization came to your attention and became known to you while you have been in Gary?

Mr. LEHRER. I refuse to answer that question on the same grounds.

Mr. SCHERER. Now, Mr. Chairman, direct the witness.

The CHAIRMAN. You are directed to answer that question.

Mr. SCHERER. I think I should say, Mr. Chairman, to the witness, that when the chairman directs you to answer the question it means that this committee does not accept the reasons you give for refusal to answer the question and that if you persist in refusing to answer the question you subject yourself to possible contempt proceedings.

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

Mr. TAVENNER. Will you tell the committee, please, what your formal educational training has been?

Mr. LEHRER. I refuse to answer that question on the grounds stated, and I think my education is my own business.

Mr. TAVENNER. Is it not a fact that you hold an AB degree from Rutgers University in New Brunswick, N. J.?

Mr. LEHRER. I refuse to answer that question. I don't see where it is pertinent. I refuse to answer on the grounds I previously stated.

Mr. TAVENNER. May I have a direction?

The CHAIRMAN. You are directed to answer the question.

Mr. LEHRER. I refuse to answer on the grounds I have already stated.

Mr. TAVENNER. I hand you a photostatic copy of a record in the name of Robert Lehrer from Rutgers University and ask you whether or not that is, as far as you can determine, a correct record of your 3 years' work at Rutgers University.

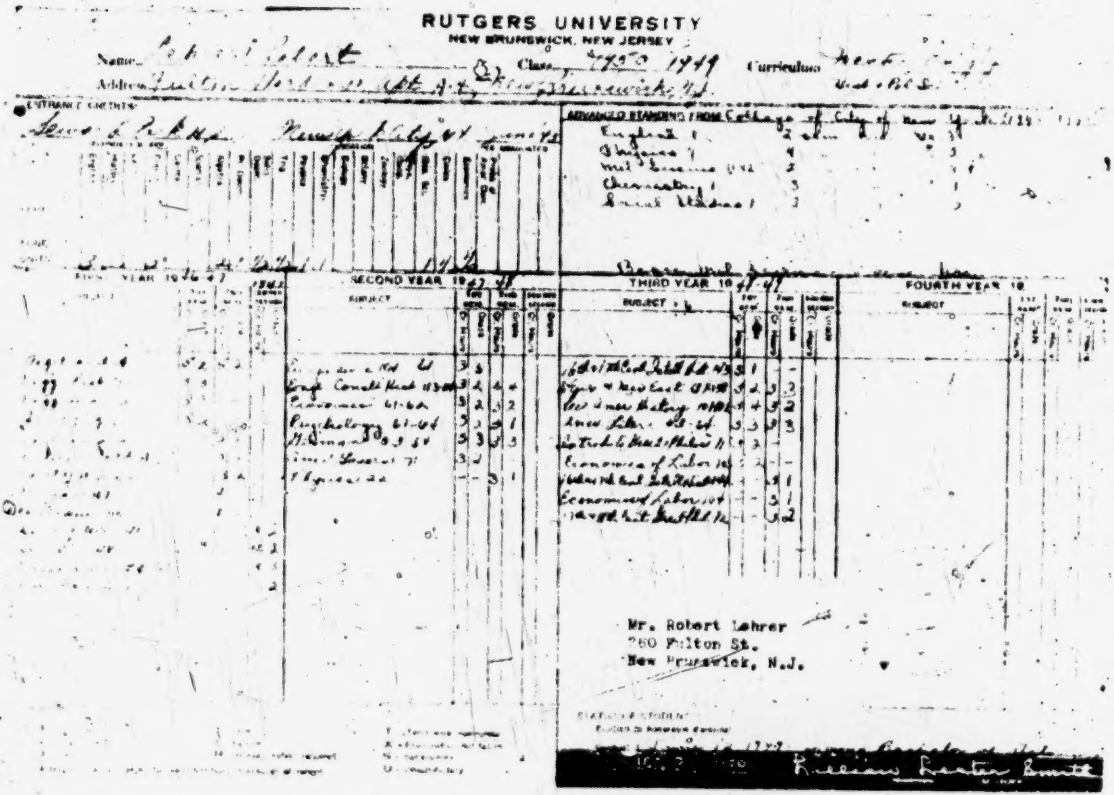
(Document handed to witness.)

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

Mr. TAVENNER. I desire to offer the document in evidence and ask that it be marked "Lehrer Exhibit No. 1."

The CHAIRMAN. Let it be marked and made a part of the record.

LEHRER EXHIBIT No. 1



RUTGERS UNIVERSITY
NEW BRUNSWICK, NEW JERSEY

Name Robert Lehrer Class 1948 1949 Curriculum

Address Fulton St. [illegible] New Brunswick, N.J.

ENTRANCE CREDITS

ADVANCED STANDING FROM

SECOND YEAR 19[illegible]

THIRD YEAR 19[illegible]

FOURTH YEAR 19

Mr. Robert Lehrer
760 Fulton St.
New Brunswick, N.J.

Mr. TAVENNER. Mr. Lehrer, did you make application for employment in steel on August 30, 1949 in Gary?

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

Mr. TAVENNER. I hand you a photostatic copy of an application for employment at Carnegie-Illinois Steel Corp. bearing date of August 30, 1949, at the end of which there is signed in ink the name, Robert Lehrer.

(Document handed to witness.)

Mr. TAVENNER. Will you examine the signature and state whether or not that is your signature?

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

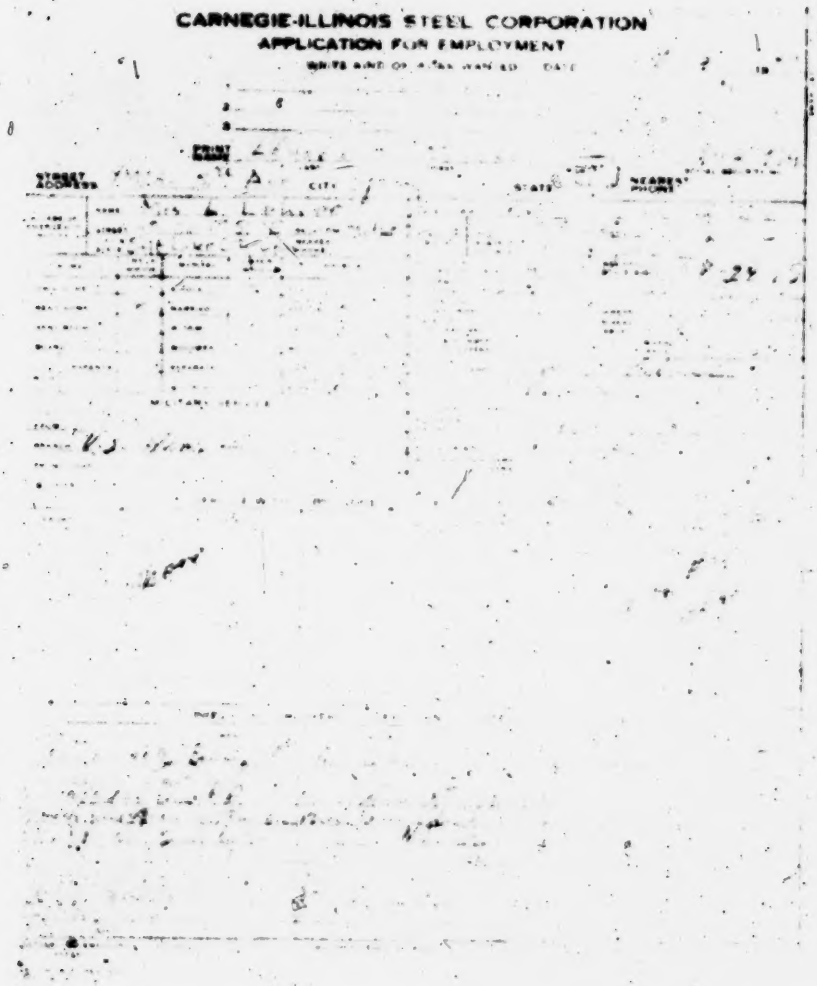
Mr. TAVENNER. That is your name, is it not, signed at the bottom of the application?

Mr. LEHRER. I refuse to answer that question also on the same grounds.

Mr. TAVENNER. I desire to offer the document in evidence and ask that it be marked "Lehrer Exhibit No. 2."

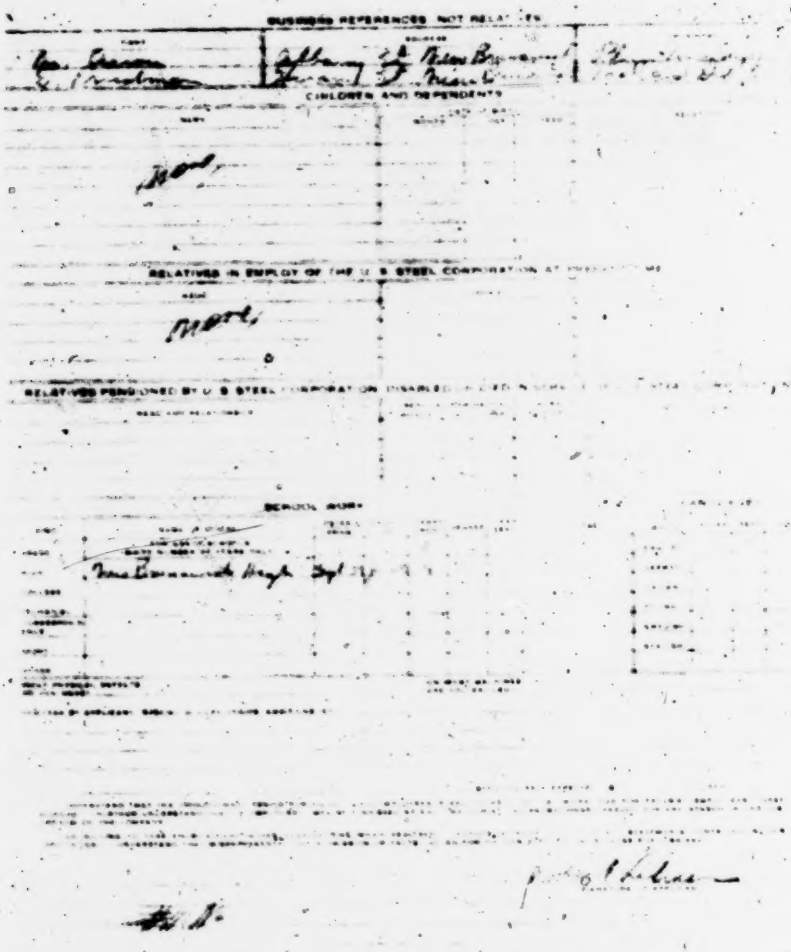
The CHAIRMAN. Mark it and let it be made a part of the record.

LEHRER EXHIBIT No. 2



CARNEGIE-ILLINOIS STEEL CORPORATION

APPLICATION FOR EMPLOYMENT



Mr. TAVENNER. Now, if you will hand it to me.

Mr. LASSERS. We haven't finished examining it.

The CHAIRMAN. Take the document, counsel.

(The document was returned to Mr. Tavenner.)

Mr. LASSERS. We haven't finished examining it. Can we have a copy?

Mr. TAVENNER. You have examined that copy. Inasmuch as your witness refused to identify his signature I don't see why he wants to see it.

Mr. LASSERS. We haven't finished examining the document, Counsel.

The CHAIRMAN. The witness declined to answer the question so the application can be of no interest to you.

Mr. LASSERS. We have not finished examining this document.

The CHAIRMAN. You already refused to answer questions. All right. Go ahead.

Mr. LASSERS. We have a right to examine the document whether we refused to answer questions on it or not.

The CHAIRMAN. Go ahead.

Mr. TAVENNER. May I have the other document?

(Document handed to Mr. Tavenner.)

Mr. TAVENNER. Exhibit No. 1 showing your record at Rutgers University shows——

(The witness conferred with his counsel.)

Mr. TAVENNER. Excuse me. Shows that you were in attendance for your first year at Rutgers for the year 1946-47, the second year 1947-48, the third year 1948-49. During that same period of time were you employed in any industry?

(The witness conferred with his counsel.)

Mr. LEHRER. I would like to see that employment application again.

The CHAIRMAN. This isn't relating to that at all. Were you employed at any place at all while you were at college?

(The witness conferred with his counsel.)

Mr. LEHRER. I feel that counsel and I have a right to examine the original document and it was taken away from counsel.

The CHAIRMAN. This question has nothing at all to do with the original document at all.

If you will identify your signature on that application there by indicating that you have some legitimate interest in it you will certainly be permitted to identify it. In view of the fact you have not identified your signature, I don't know [illegible] possible interest you might have in that piece of paper.

(The witness conferred with his counsel.)

Mr. LEHRER. I believe that is for us to determine.

The CHAIRMAN. Yes. All right. Whether or not you see it is for me to determine, so there we are.

Mr. TAVENNER. Will you answer the question?

Mr. LEHRER. Would you repeat the question, sir?

Mr. TAVENNER. The question was whether or not you were employed in industry at any time during the period between 1946 and 1949.

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

(The witness conferred with his counsel.)

I would like to see that employment application again. It was taken from my counsel's hand.

Mr. TAVENNER. Yes, because you refused to testify as to anything with regard to the application, either as to the identification of your signature or as to having even made such an application.

But may I ask you, if I show you this application for the purpose of refreshing your recollection as to employment in industry, would you answer the question?

(The witness conferred with his counsel.)

Mr. LEHRER. I will determine that after I see the document.

The CHAIRMAN. Mr. Tavenner, would you suspend a moment?

(Announcements off the record.)

The CHAIRMAN. Go ahead.

Mr. TAVENNER. Very well.

I will be very glad to show you the document again but before doing so let me ask you whether this application truthfully stated your educational background when you submitted it to Carnegie Steel?

(The witness conferred with his counsel.)

Mr. LEHRER. I insist on seeing the document.

(Document handed to witness.)

Mr. TAVENNER. Will you examine the document and tell us whether or not you concealed any facts relating to your educational training? You will find it on the back page—the reverse side.

Mr. SCHERER. You don't expect him to answer that, do you, Mr. Tavenner?

The CHAIRMAN. I thought you were interested in the statements with respect to employment.

Mr. TAVENNER. Both statements.

The CHAIRMAN. It is quite obvious they are not interested in it now. Have you an extra copy of that?

Mr. TAVENNER. No, sir.

Mr. COLLINS. There was only one photostat.

Mr. TAVENNER. Will you answer the question?

(The witness conferred with his counsel.)

The CHAIRMAN. You don't have to go to all that trouble. We will give it to you after we have completed using it.

Mr. LASSERS. May we retain this copy?

The CHAIRMAN. After we have finished with it we will give it to you because we have the original.

Mr. LASSERS. With the understanding we will allow——

The CHAIRMAN. We will save you the trouble of copying it.

Mr. LASSERS. With that understanding.

Mr. TAVENNER. I will have a copy made and sent to you.

Mr. LASSERS. We will retain this copy.

The CHAIRMAN. We will give you this copy to expedite the hearing. Go ahead.

Mr. LEHRER. Will you repeat your question, please, sir?

Mr. TAVENNER. My question was whether or not at the time that application was prepared you concealed from your employer your educational background by not putting anything in your application regarding it.

Mr. LEHRER. I refuse to answer that question on the grounds I previously stated.

Mr. TAVENNER. Now, I want the record to show that the witness has not looked at this application which he said he had to have before he answered that question. You knew when you asked me for the document you weren't going to answer that question, didn't you?

The CHAIRMAN. And were not going to look at it.

Mr. TAVENNER. I told you that the information was on the back of the document. You have not turned it over to look at it, have you? You are practicing the same kind of deceit with this committee now that you practiced in your company when you filed that application, isn't that so?

Mr. LEHRER. I don't see that it is any of the committee's business what I do on an application.

The CHAIRMAN. Well, it is the business of the committee and of the Congress of the United States to prevent people from practicing deception in order to conceal the real purpose of their seeking employment in a particular place.

Go ahead.

Mr. TAVENNER. Were you a member of the Communist Party—will you let me see the document a minute?

Mr. LASSERS. On the understanding that I will have it back.

Mr. SCHERER. Oh, come on.

The CHAIRMAN. Stop that.

Mr. SCHERER. You know better.

(Document handed to Mr. Tavenner.)

Mr. TAVENNER. On August 30, 1949, the date of this application——

Mr. LEHRER. Would you restate your question?

Mr. TAVENNER. Were you a member of the Communist Party on August 30, 1949, the date of this application?

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

The CHAIRMAN. You are directed to answer the question.

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

Mr. TAVENNER. Were you advised by any member of the Communist Party to come to Gary for the purpose of filing this application for employment?

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

Mr. TAVENNER. Mr. Chairman, I would like to read into the record the report of school work as required to be filled out on this application form.

The CHAIRMAN. Proceed.

Mr. TAVENNER. Under the title of school work it is stated as kinds of school work, "high school, New Brunswick High, from September 1939 to June 1943." "College" is left entirely in blank.

Why did you conceal in this application the fact that you had a B. A. degree from Rutgers University?

Mr. LEHRER. I feel that my education is my business and I refuse to answer that question on the grounds that I have already stated.

The CHAIRMAN. Don't you think it was the business of the United States Steel in appraising your suitability for employment to know that you had been graduated from Rutgers University?

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

The CHAIRMAN. Or did you forget that you had gone to college 4 years when you filed that application?

Mr. LEHRER. Is that a question, sir?

The CHAIRMAN. That is a question.

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

Mr. TAVENNER. Your application shows during the period of time we have shown by exhibit No. 1 when you were attending Rutgers University, that you were working for the Pennsylvania Railroad Co. in New Brunswick from May 1948 to October 1948 and that you were working for the Aaron Plumbing Supply Co. from November 1948 to June 1949. Is that correct?

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

Mr. TAVENNER. Were you so employed at those two places?

Mr. LEHRER. I have already answered that I refuse to answer that question on the grounds that I have already stated.

Mr. SCHERER. Of course he wasn't. It was another fraud perpetrated.

(Document handed to Mr. Lassers.)

Mr. TAVENNER. What was the nature of your employment at the United States Steel Corp.?

Mr. LEHRER. I refuse to answer that question on the grounds that I have already stated.

Mr. TAVENNER. Didn't you become a third helper in the melting and pit operations division?

Mr. LEHRER. I refuse to answer that question on the grounds I have already stated.

Mr. TAVENNER. On your arrival in Gary did you immediately identify yourself with the Communist Party by affiliating with it here?

Mr. LEHRER. I refuse to answer that question on the grounds that I have already stated.

Mr. TAVENNER. Did you hear the testimony of Mr. LaFleur yesterday in which he testified that you were a member of the section group, the Steel Section Group of the Communist Party——

(The witness conferred with his counsel.)

Mr. TAVENNER. Up as late as the time that he left the Communist Party?

Mr. LEHRER. I refuse to answer that question on the grounds that I have already stated.

Mr. TAVENNER. Well, were you a member of the section group of the Communist Party, the Steel Section Group?

Mr. LEHRER. I refuse to answer that question on the grounds that I have already stated.

Mr. TAVENNER. Will you tell the committee whether or not at this time Communist colonization of the steel industry is being practiced in Gary?

Mr. LEHRER. I refuse to answer that question on the grounds I have previously stated.

Mr. TAVENNER. May I have a direction?

The CHAIRMAN. Yes. You are directed to answer that question.

Mr. LEHRER. I refuse to answer that question on the grounds that I have previously stated.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMEN. Have you any questions, Mr. Scherer?

Mr. SCHERER. Mr. Chairman, this witness is so obviously in contempt of the Congress by his refusal to answer the questions and not even invoking the fifth amendment, that I move this subcommittee recommend to the full committee that this witness be cited for contempt of Congress.

The CHAIRMAN. I think we ought to wait until our colleague of the subcommittee, Mr. Tuck, has an opportunity to hear from us. I do not think there is any question about the action that will be taken, but I think we ought to let him know what is in the record. We will defer action on the motion until Governor Tuck sees the record.

The witness is excused.

Call your next witness.

Mr. TAVENNER. Mr. Albert Malis, please.

The CHAIRMAN. Raise your right hand, please.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MALIS. I do.

TESTIMONY OF ALBERT "KEG" MALIS, ACCOMPANIED BY COUNSEL, JUSTIN WAITKUS

Mr. TAVENNER. What is your name, please, sir?

Mr. MALIS. Albert "Keg" Malis.

Mr. TAVENNER. Would you spell your last name?

Mr. MALIS. M-a-l-i-s.

Mr. TAVENNER. Will counsel accompanying the witness please identify himself for the record?

Mr. WAITKUS. My name is Justin Waitkus, 589 Broadway, Gary, Ind.

Mr. TAVENNER. When and where were you born, Mr. Malis?

Mr. MALIS. January 24, 1914.

Mr. TAVENNER. Where?

Mr. MALIS. In Gary.

Mr. TAVENNER. You are a native of Gary?

Mr. MALIS. Yes, sir.

Mr. TAVENNER. How are you employed, Mr. Malis? What is the nature of your employment?

Mr. MALIS. I am a steel worker.

Mr. TAVENNER. A steel worker?

Mr. MALIS. Yes, sir.

Mr. TAVENNER. Do you hold any official position in your union?

Mr. MALIS. Yes, I do.

Mr. TAVENNER. What is that position?

Mr. MALIS. Well, I am a trustee.

Mr. TAVENNER. A trustee?

Mr. MALIS. Yes.

Mr. TAVENNER. Will you tell the committee briefly what your formal education and training has been?

Mr. MALIS. Well, I have gone through grade school and high school.

Mr. TAVENNER. When did your employment in the steel industry begin?

Mr. MALIS. It was 1936.

Mr. TAVENNER. And you have been constantly employed there since that time?

Mr. MALIS. Well, most of the time, yes. I was laid off at one time in the slack time.

Mr. TAVENNER. Did you serve in the Armed Forces?

Mr. MALIS. No, sir.

Mr. TAVENNER. So, since 1936 you have been constantly employed there except for temporary shutdowns or temporary layoffs?

Mr. MALIS. Three sessions, yes, sir.

Mr. TAVENNER. How long have you been an official of your union?

Mr. MALIS. Well, I have held several elected posts.

Mr. TAVENNER. Tell us first when you became trustee.

Mr. MALIS. I believe I became trustee in—well, we have our elections in June, and I think we are inaugurated in July, officially put into office, and I believe it was 1952.

Mr. TAVENNER. And you have been trustee since that time?

Mr. MALIS. Since that time; yes, sir.

Mr. TAVENNER. Prior to that what position did you hold in the union?

Mr. MALIS. I was a grievance committee man.

Mr. TAVENNER. For how long a period of time?

Mr. MALIS. Bear with me. This has been a while.

Mr. TAVENNER. Yes; I understand.

Mr. MALIS. I am trying to think.

Mr. TAVENNER. Approximate.

Mr. MALIS. To the best of my knowledge, I believe it was in the same thing. We always have our elections in June and inaugurated in July. I believe it was 1946, that I was——

Mr. TAVENNER. Yes.

Mr. MALIS. To the best of my memory.

Mr. TAVENNER. Well, Mr. Malis, the committee has received testimony here from Mr. LaFleur that you were a member of the Communist Party during the period that he was active in Communist Party work here, at least from 1945 or 1946 up until 1950 or maybe 1951. Was he correct in that identification of you?

Mr. MALIS. Who? On whose testimony did you say?

Mr. TAVENNER. Mr. LaFleur.

Mr. MALIS. Mr. LaFleur?

Mr. TAVENNER. Yes.

Mr. MALIS. And specifically what did he say? I was present, but I was in the back and I couldn't hear too well.

Mr. TAVENNER. He said that you were a member of the Communist Party up until the period that he himself dropped out from active participation in Communist Party work, which apparently was in 1950 or 1951.

Mr. MALIS. Well, that statement is not correct.

Mr. TAVENNER. Well, were you a member of the Communist Party?

Mr. MALIS. Yes; I was at one time.

Mr. TAVENNER. Up until what time?

Mr. MALIS. To the best of my knowledge, and I have been trying to think back and trying to find out, I always thought that I had gotten out either in late 1944 or early in 1945. But in thinking back and everything else, it must have been a little later, because I know the war was over, and so it must have been sometime late in 1945, I believe, or even possibly very early in 1946. I don't remember, but sometime in that area.

Mr. TAVENNER. Well, did you attend any closed sessions of the Communist Party after 1945?

Mr. MALIS. To the best of my knowledge, I don't remember attending any.

Mr. TAVENNER. You say to the best of your knowledge you do not remember. Now, wouldn't you know whether or not you attended any closed meetings of the Communist Party? Wouldn't a thing of that sort be something that you could answer definitely?

Mr. MALIS. Well, as far as I know, there never actually was any closed meetings of the party. I mean in the sense that you had to show any identification or anything that you actually were a member of the party to be in at any time that I was in the party.

The CHAIRMAN. Where were the meetings held?

Mr. MALIS. Sir?

The CHAIRMAN. Where were the meetings held?

Mr. MALIS. Well, they were held in various places.

The CHAIRMAN. Name some of them.

Mr. MALIS. Well, it has been a long time ago, but they had some headquarters in various places in Gary.

The CHAIRMAN. Where were the headquarters?

Mr. MALIS. Well, it seemed like at some times they were on 13th somewhere—I forgot whether it was Adams or Jefferson—somewhere in that neighborhood there was a headquarters.

The CHAIRMAN. Was it a hall or an office?

Mr. MALIS. I believe it was a store front of some kind, an abandoned store front, a store, a building.

The CHAIRMAN. How many people attended the meetings?

Mr. MALIS. Well, it has been so long ago that I mean——

The CHAIRMAN. To the best of your recollection how many people attended the meetings?

Mr. MALIS. Well, of course now, like I say, I was in it for quite a while, these conditions varied in different circumstances.

The CHAIRMAN. What was the maximum number of people to ever attend a meeting that you attended, approximately?

Mr. MALIS. Well, I wouldn't know as people who I assumed to be Communist Party members—I don't know. Maybe sometimes it might have been 15 or 20 and then it varied all over the map.

The CHAIRMAN. Who were they?

Mr. MALIS. Sir?

The CHAIRMAN. Who were they?

Mr. MALIS. Who are they?

The CHAIRMAN. Yes. Who were the 20 people that you say attended?

Mr. MALIS. I don't remember.

The CHAIRMAN. Do you want us to believe that you attended meetings regularly as a Communist and you don't remember any of the people who attended the meetings with you? But still you are able to tell us approximately how many people attended the meetings.

Mr. MALIS. I said it was a guess on my part. It has been so long ago that I couldn't possibly remember.

The CHAIRMAN. Yes, but you belonged for a long period of time.

Mr. MALIS. Yes, sir.

The CHAIRMAN. During that long period of time who were the most active members of the party with you?

Mr. MALIS. Well, actually I have no evidence to testify that anyone was a member of the party, but in my opinion I think there was some people that probably were.

The CHAIRMAN. Why don't you tell us who they were? Maybe we can talk to them and maybe they can help the Congress of the United States in its struggle in this field.

Mr. MALIS. Well, I think that if the committee wants to know about any people the best I can do is try to recall whoever is concerned.

The CHAIRMAN. We are all concerned. Why don't you tell us who these people were?

Mr. MALIS. I will tell you, it has been so long ago that I——

The CHAIRMAN. Go ahead, Mr. Tavenner.

Mr. TAVENNER. You said you would try to the best that you can to recall.

Mr. Chairman, it might be well for us to confer with this witness before further testimony as to names by him. We would not want him to make a mistake, of course.

The CHAIRMAN. That is what I have in mind. We would not want him to name names here because he says it is difficult to remember, and he might make a mistake and name people who were not members of the party, so I suggest that the witness step aside. The subpena will remain in effect and then Mr. Collins or one of our investigators will be in touch with you some day and we will see if you can be of assistance.

Mr. TAVENNER. It will give us an opportunity to check on the information.

The CHAIRMAN. That is right. All right. You are still under subpena, Mr. Malis.

Mr. MALIS. I am still under subpena?

The CHAIRMAN. We will let you know when to appear.

Mr. MALIS. For these hearings?

The CHAIRMAN. Yes. Not this week. Not today.

Mr. WAITKUS. Not for this hearing?

The CHAIRMAN. That is right.

Mr. WAITKUS. Thank you.

The CHAIRMAN. Call your next witness.

Mr. TAVENNER. Mr. Sargent, will you come forward, please?

The CHAIRMAN. Will you raise your right hand, please?

Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God.

Mr. SARGENT. I do.

TESTIMONY OF JOHN SARGENT, ACCOMPANIED BY COUNSEL, WILLARD J. LASSERS

Mr. TAVENNER. It is noted for the record that the witness is accompanied by Mr. Lassers, the same counsel who accompanied Mr. Lehrer.

The CHAIRMAN. All right.

Mr. TAVENNER. Will you state your name, please, sir?

Mr. SARGENT. Sir, I have a statement that was notarized that I would like to become part of the printed record. Is that possible?

Mr. TAVENNER. Will you please state your name, sir?

Mr. SARGENT. My name is John Sargent.

Mr. TAVENNER. John Sargent?

Mr. SARGENT. That is right.

Mr. LASSERS. The witness has made a request for the Chairman about some statement.

The CHAIRMAN. We will take it under advisement. I just looked over it hastily and I don't know the relevancy, but it may be that it is.

Mr. TAVENNER. When and where were you born, Mr. Sargent?

(The witness conferred with his counsel.)

Mr. SARGENT. Sir, would you repeat your answer regarding that statement?

The CHAIRMAN. I am sure you heard me.

Mr. SARGENT. I am sorry.

The CHAIRMAN. I said we would take this under advisement.

Mr. SARGENT. Yes, sir.

The CHAIRMAN. I am sure that everything that you have stated there will be gone into at this hearing. You have an opportunity to answer the questions for the record rather than to submit your answers in this fashion.

Mr. TAVENNER. When and where were you born?

Mr. SARGENT. I was born in Chicago, Ill., July 4, 1942.

Mr. TAVENNER. Where do you now reside?

Mr. SARGENT. I now live in Gary at 283 North Hamilton Street.

Mr. TAVENNER. How long have you resided in Gary?

Mr. SARGENT. I would say since about 1934.

Mr. TAVENNER. How are you employed?

Mr. SARGENT. I work for the Inland Steel Co., and I am an electrician in the coal strip department.

Mr. TAVENNER. I notice from a copy of the statement which you submitted, which was passed out to the persons present in the hearing room here by your counsel prior to the meeting being called to order, that you say that about 1931 you joined the radical movement. What radical movement?

Mr. SARGENT. The Young Communist League.

Mr. TAVENNER. Were you ever a member of the Communist Party?

Mr. SARGENT. I think later, yes. Later I was also a member of the Communist Party.

Mr. TAVENNER. You say you think. Well, you know, don't you?

Mr. SARGENT. I said yes. I was a member of the Communist Party in later years.

Mr. TAVENNER. I understood you to say you think. You thought you were a member. Did you know Mr. La Fleur?

Mr. SARGENT. To the best of my recollection I have never seen the man. I don't know him at all.

Mr. TAVENNER. Well, he identified you as a member of the Communist Party. He was correct in that, was he not?

Mr. SARGENT. I was working yesterday. I did not hear the testimony and I would very much like if you could read that testimony to me.

The CHAIRMAN. There is no question about it. He admits he was a member of the Communist Party so there is no need to show him what Mr. LaFleur said.

Mr. SARGENT. Sir? I did not admit I am a member of the Communist Party.

The CHAIRMAN. Were, I said.

Mr. SARGENT. Oh, yes.

Mr. TAVENNER. Mr. LaFleur testified that after 1945 and on up until about the time he left you were a member of the Communist Party, which would have been somewhere around 1950 or 1951, is that correct?

Mr. SARGENT. Well, I would like to again ask you to read for me, since I was not present, the testimony of Mr. LaFleur. I would like to get it in the full context of what he spoke about.

The CHAIRMAN. Let's make it very simple. Were you a member of the Communist Party in 1951?

Mr. SARGENT. No, sir.

The CHAIRMAN. Were you in 1950?

Mr. SARGENT. No, sir.

The CHAIRMAN. All right.

Mr. TAVENNER. Were you a member of the Communist Party in 1945?

Mr. SARGENT. No, sir.

The CHAIRMAN. While you were a member of the Communist Party, were you aware of the influx of bright young men who concealed the fact that they were college graduates into laboring jobs in the steel business?

Mr. SARGENT. Mr. Chairman, I don't think either I or my associates were very bright young men in those days. I was completely unaware of any bright young men who were trying to get jobs in the steel industry who were Communists.

Mr. TAVENNER. Were you acquainted with Mr. Lehrer?

Mr. SARGENT. I met Mr. Lehrer one day last summer when he took my kids home from the beach. That was the first time I ever saw him.

Mr. TAVENNER. When did you leave the Communist Party?

Mr. SARGENT. To the best of my recollection in 1940.

Mr. TAVENNER. In 1940?

Mr. SARGENT. Right.

Mr. TAVENNER. Why did you leave?

Mr. SARGENT. I left the Communist Party because I became discouraged with their methods of work. I no longer believed in what they were trying to do. I felt that the Communist Party had become an instrument of the foreign policy of the Soviet Union, and I was not willing to go along with that situation.

Mr. TAVENNER. Did you express those views at the Communist Party meetings?

Mr. SARGENT. I attended very, very few meetings of the Communist Party, as I remember. I expressed those views to whoever would listen to them, because they were my views.

Mr. TAVENNER. Can you advise the committee of any of the activities of the Communist Party within the steel industry during the course of the past 5 years?

Mr. SARGENT. No, sir. I was not a member of the Communist Party in the past 5 years and know very little if anything about their activities.

Mr. TAVENNER. Did you continue to associate with those who had been members of the Communist Party with you?

Mr. SARGENT. Well, I have no knowledge that anybody was a member of the Communist Party. I associated with people who were in my local union as local union members.

Mr. TAVENNER. As what?

Mr. SARGENT. Local union members and members of the same local union.

Mr. TAVENNER. Will you tell the committee, please, the names of any of the members in your local union who were members of the Communist Party with you? That is, persons who are now there.

Mr. SARGENT. I can't—yes, as far as I know, and I am trying to remember back, I don't know of anybody who was a member of the Communist Party with me. At least I don't remember. I don't know that they remained members of the Communist Party. That is for sure.

Mr. TAVENNER. I understand that. If you have not been connected you would not know whether they are presently active in the Communist Party or not, but my question is whether there are persons there now who were members of the Communist Party with you while you were a member.

Mr. SARGENT. Well, I am sorry, sir. I don't know that I can actually truthfully answer that question. I think you ought to understand this: I was active in the Young Communist League. My association with the Communist Party was very small. The Young Communist League in those days was a rather broad organization of young fellows and girls who got together in socials, sports, got together in bull sessions as young people do, I guess, today.

There was no discipline of any kind that required a person to join the organization. Anybody who came around and wanted to sit around and participate did. For that reason there are numerous people, I presume, who were in and out of the thing, and I would scarcely be able to point my finger at any of those. I mean that is I don't know whether they were members and I don't think that is particularly important. The important thing at the time was to get these young people together and get them to associate together and discuss things together and participate in various sports and social activities.

Mr. TAVENNER. That was in the Young Communist League group that you are speaking of?

Mr. SARGENT. Yes, that was in 1940, 1939 and so on.

Mr. TAVENNER. When did you leave the Young Communist League and become a member of the Communist Party?

Mr. SARGENT. I don't believe I ever left the Young Communist League and became a member of the Communist Party. I think I was both, concurrent, at the same time.

Mr. TAVENNER. I see. During the whole period of your membership?

Mr. SARGENT. Oh, no. I think during the latter part of the period I was responsible and in charge of the Young Communist League and because of that I had to consult with Communist Party members, and that was my association with the Communist Party, largely on the basis of what was happening in the Young Communists.

Mr. TAVENNER. Who was the Communist organizer in 1940, at about the period that you say you dropped out?

Mr. SARGENT. You know, I can't remember. I have actually tried to think. There have been so many people in and out of this thing, and I don't know. And I would certainly dislike to name somebody——

Mr. SCHERER. Did I understand you, Witness, to say that you were in charge of the Young Communist League?

Mr. SARGENT. Yes, sir, that is correct.

Mr. SCHERER. What was your title? Were you director of the Young Communist League in this area?

Mr. SARGENT. No. I think I was called an organizer of the Young Communist League.

Mr. SCHERER. And as such, as an organizer for the Young Communist League, you had contact with Communist Party functionaries in the area, did you not?

Mr. SARGENT. That is correct.

Mr. SCHERER. How long did you retain the position as organizer of the Young Communist League?

Mr. SARGENT. Well, I can't even answer that accurately. I disassociated myself entirely from the whole outfit in 1940.

Mr. SCHERER. I understand that.

Mr. SARGENT. And I would say some years prior to that I became very inactive, both in the Young Communist League and in the Communist Party.

Mr. SCHERER. Did you receive compensation as an organizer?

Mr. SARGENT. No, sir.

Mr. TAVENNER. I got the impression from your statement that you left the Communist Party because you were convinced that the Communist Party was being used as the tool or instrument of a foreign power. That is about the impression that I got from your statement.

Mr. SARGENT. Well, used, as I put it, as a spokesman of a foreign policy of the Soviet Union in this country.

Mr. TAVENNER. Was the Communist Party endeavoring to spread that type of propaganda among the various organized groups of labor?

Mr. SARGENT. I don't know. I presume that they were trying to do that. This was their policy. I mean I can't—unless you ask me a specific question it would be hard to answer it.

Mr. TAVENNER. I am trying to find out at even as early a date as 1940 the extent to which the Communist Party was using its propaganda within the labor unions.

Mr. SARGENT. Well, I think at that time, around that time we had the Hitler-Russian Pact, which might have been perfectly justifiable

so far as the Soviet Union was concerned for their own particular benefit, but I certainly didn't think we ought to get excited about the pact that Stalin made with Hitler. Around that time you had the invasion of Finland, I believe, by Russia, and I wasn't particularly anxious to beat the drums for the Soviet Union on that cause. There were any number of circumstances that led me to believe that we were no longer an organization representing the working people in the town and particularly interested in that problem, that we were becoming more and more the excuse for Russian policy, and I didn't believe that was part of what we were interested in. At least it was not part of what I was interested in.

Mr. TAVENNER. And the Communist Party was trying to use the labor organizations to sponsor its particular line at the time?

Mr. SARGENT. I don't know about labor organizations, but certainly as Communists they were sponsoring that particular position, and I wanted no part of it.

Mr. TAVENNER. Well, wasn't the Communist Party trying to sell that to labor? Wasn't that what they were doing in labor?

Mr. SARGENT. Well, the Communist Party had newspapers, had various ways of selling their position. I don't think they made any secret of their position. That was their position. They were open for it.

Mr. TAVENNER. You have no information as to Communist Party activities within the field of labor at this time?

Mr. SARGENT. No, sir.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Well, it is very refreshing to me and I am sure your case is typical, to know that the workers of this country have come to appreciate, just as they did in Hungary, what this Communist thing is. I am very glad that we had the opportunity of hearing you this morning.

Mr. SARGENT. May I make one comment, Mr. Walter?

The CHAIRMAN. Yes, surely.

Mr. SARGENT. I want you, if you can, to appreciate the conditions which made me join the Young Communist League. I think that is important to your investigation.

The CHAIRMAN. I think I understand as well as anybody. Maybe that is why I went to Congress.

Mr. SARGENT. I want to point out that there was a great depression in the country.

The CHAIRMAN. Yes.

Mr. SARGENT. We didn't know where we were going. I couldn't find employment, together with a lot of other people, and we were all seeking a solution, and I thought this was the solution. We were interested in unemployment compensation, something that we have received now and didn't receive then, better relief, better job opportunities. I daresay there are thousands upon thousands of people that joined under those circumstances.

The CHAIRMAN. But it was the Stalin-Hitler Pact that made you realize that communism was hitting on all these fine, broad general welfares that the liberal people in this country advocated, as a means of foisting on the worker its beliefs, isn't that correct?

Mr. SARGENT. Essentially, that is true.

The CHAIRMAN. When the Stalin-Hitler Pact was entered into you saw through it for what it was?

Mr. SARGENT. That is correct, and I began to feel that the party's primary interest was not that of the people in this country but primarily interested in protecting the Soviet Union.

Now, I have no particular objection to a group of people who would say, "My job and my feeling is that Germany or England or France or any other country should be protected for any reason," but that there should be their cause and there probably would be a lot of people join a cause like that. That was not in my opinion the reason I wanted to belong to the association.

The CHAIRMAN. The only thing I cannot understand is why anybody would remain a Communist after Korea. Up to Korea I can see justification and reason but that should have made it perfectly obvious to everybody just exactly what this is—a power fight for world domination.

Is there any further question?

Thank you. You are excused.

I think we will take a break for about 5 minutes.

(Brief recess.)

The CHAIRMAN. The committee will be in order.

May I remind you that the no-smoking rule is still applicable.

Call your next witness, Mr. Tavenner.

Mr. TAVENNER. Mr. Lazo Rebraca, will you come forward, please?

The CHAIRMAN. Will you raise your right hand, please?

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. REBRACA. I do.

TESTIMONY OF LAZO REBRACA, ACCOMPANIED BY COUNSEL, SAMUEL S. DUBIN

Mr. TAVENNER. What is your name, please, sir.

Mr. REBRACA. Lazo Rebraca.

Mr. TAVENNER. Will counsel accompanying the witness please identify himself for the record?

Mr. DUBIN. Sam Dubin, 504 Broadway, Gary.

Mr. TAVENNER. Will you spell your name, Mr. Rebraca?

Mr. REBRACA. R-e-b-r-a-c-a.

Mr. TAVENNER. When and where were you born, Mr. Rebraca?

Mr. REBRACA. I was born in Yugoslavia.

Mr. TAVENNER. When?

Mr. REBRACA. In 1903, March 8.

Mr. TAVENNER. Are you a naturalized American citizen?

Mr. REBRACA. Yes, sir.

Mr. TAVENNER. When and where were you naturalized?

Mr. REBRACA. In Hammond, Ind., 1947.

Mr. TAVENNER. Where do you now reside?

Mr. REBRACA. 3825 Virginia, Gary, Ind.

Mr. TAVENNER. How long have you been a resident of Gary?

Mr. REBRACA. About 37 years.

Mr. TAVENNER. What is the nature of your employment?

Mr. REBRACA. I am a paint inspector.

Mr. TAVENNER. In steel?

Mr. REBRACA. Gary works.

Mr. TAVENNER. Which branch? Where is it located?

Mr. REBRACA. Electrical department.

Mr. TAVENNER. How long have you been employed in steel?

Mr. REBRACA. Approximately 22 years.

Mr. TAVENNER. Mr. Rebraca, will you advise the committee, please, whether or not there is an organized group of the Communist Party within your union?

Mr. REBRACA. Sir, I can't say that there is. I mean I wouldn't understand what is an organized group to begin with. I am not an expert in the field, and all I know is in my union the people I do know as union people. That is about all I could say.

Mr. TAVENNER. Have you been aware of the existence of the Communist Party cell or group in Gary?

Mr. REBRACA. I have not been aware, sir.

Mr. TAVENNER. You have never known of the existence of such a group?

Mr. REBRACA. I have not known of such a group.

Mr. TAVENNER. Then by that we may infer that you have never been a member of the Communist Party, is that correct?

Mr. REBRACA. I have never been a member of the Communist Party, sir.

Mr. TAVENNER. Have you attended Communist Party meetings?

Mr. REBRACA. If I have I didn't know them to be as Communists.

Mr. TAVENNER. You were identified as having been a member of the Communist Party by a witness by the name of Mr. LaFleur.

(The witness conferred with his counsel.)

Mr. REBRACA. Mr. LaFleur in his testimony did not say that I was a Communist. He did, however, imply that I was participating up until 1950. I want to state right here and now that I have not been a Communist, I have not participated, and if Mr. LaFleur has anything else to add to that I would like to hear it.

Mr. TAVENNER. You have never paid Communist Party dues?

Mr. REBRACA. I have not paid any Communist Party dues.

Mr. TAVENNER. Have you made contributions to the Communist Party?

Mr. REBRACA. Not to my knowledge, I haven't, although I am quite generous. Sometimes I donate to a lot of things, but I don't know if they go to a Communist cause or not.

Mr. TAVENNER. Is there any information that you can give the committee at this time of the operations of the Communist Party in Gary?

Mr. REBRACA. I am sorry, sir, but I can't give you any information because I don't know of any such existence.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Scherer, have you any questions?

Mr. SCHERER. You know Mr. LaFleur?

Mr. REBRACA. I met Mr. LaFleur one time.

Mr. SCHERER. Just once?

Mr. REBRACA. Once.

Mr. SCHERER. Where did you meet him?

Mr. REBRACA. We went to Wallace for President conference.

Mr. SCHERER. Where was that?

Mr. REBRACA. In Indianapolis. He drove me in his car down there.

Mr. SCHERER. Is that the only contact you had with him? How did you happen to go with him in his automobile?

Mr. REBRACA. The phone was given to me for me to call him up and he would be more than happy to drive me down to so-called Progressive Party conference in Indianapolis.

Mr. SCHERER. Was there any other person with you in the automobile?

Mr. REBRACA. No, sir.

Mr. SCHERER. Just you and Mr. LaFleur?

Mr. REBRACA. Just I and Mr. LaFleur.

Mr. SCHERER. You never attended any other meetings with Mr. LaFleur?

Mr. REBRACA. No, sir.

Mr. SCHERER. At any time?

Mr. REBRACA. Never.

Mr. SCHERER. That was the only time you saw him until he appeared in the room here yesterday?

Mr. REBRACA. That is the only time. That is right.

Mr. SCHERER. Did he discuss with you on that trip to Indianapolis any activities of the Communist Party?

Mr. REBRACA. Not to my knowledge.

Mr. SCHERER. Not to your knowledge?

Mr. REBRACA. No, sir.

Mr. SCHERER. I have no further questions at this time.

The CHAIRMAN. You are excused.

Call your next witness.

Mr. TAVENNER. Mr. Joseph Norrick.

The CHAIRMAN. Will you raise your right hand, please?

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. NORRICK. I do.

TESTIMONY OF JOSEPH W. NORRICK, ACCOMPANIED BY COUNSEL, IRVING MEYERS

Mr. TAVENNER. Will you state your name, please, sir?

Mr. NORRICK. Joseph W. Norrick.

Mr. TAVENNER. Will you spell your last name?

Mr. NORRICK. N-o-r-r-i-c-k.

Mr. TAVENNER. Will counsel accompanying the witness please identify himself for the record?

Mr. MEYERS. My name is Irving Meyers, Chicago, Ill. I might add at this moment that I sent a telegram last Saturday in behalf of this client requesting an executive session. I received no reply. I would like to have my telegram entered of record, if you will.

The CHAIRMAN. Yes. I am sure that you realize that it wasn't the case of being impolite or discourteous. But the telegram was delivered on Monday morning in Washington, I understand, and I was in Gary, Ind.; so I did not receive your telegram.

Mr. MEYERS. I would like to repeat my request, Your Honor.

The CHAIRMAN. That is all right.

Mr. MEYERS. May I have an answer to that request?

The CHAIRMAN. We will decide whether or not it is relevant or means anything.

Mr. MEYERS. Meanwhile, we may be going into a hearing.

The CHAIRMAN. We are going into a hearing right now.

Mr. MEYERS. Are you denying my request?

The CHAIRMAN. No. We are going to take under advisement your request and then the committee will pass on the question of whether or not it is relevant. Insofar as it will act as a means of stopping the testimony or the hearing it will not be used for that purpose or accepted for that purpose.

Mr. MEYERS. Unless the ruling is made now the telegram has no useful purpose, it would appear.

The CHAIRMAN. Go ahead. Ask the question, Mr. Tavenner.

Mr. TAVENNER. When and where were you born, Mr. Norrick?

Mr. NORRICK. Mr. Tavenner, would you clarify a few things for me before I answer any questions?

Mr. TAVENNER. If there is any question you do not understand about the purpose of the hearing I would be very glad to try to explain it, or the chairman would.

(The witness conferred with his counsel.)

Mr. TAVENNER. But I would say that before attempting to clarify any such thing there is basic information that I desire to have, such as the date and place of your birth.

Mr. NORRICK. Pike County, Ind.

Mr. TAVENNER. When?

Mr. NORRICK. July 18, 1899.

Mr. TAVENNER. Are you now a resident of Gary?

Mr. NORRICK. No.

Mr. TAVENNER. Where do you reside?

Mr. NORRICK. East Chicago.

Mr. TAVENNER. Where are you employed?

Mr. NORRICK. Youngstown Sheet and Tube.

Mr. TAVENNER. How long have you been employed at Youngstown Sheet and Tube?

Mr. NORRICK. Since March of 1946.

Mr. TAVENNER. Have you been employed there constantly since that time?

Mr. NORRICK. Yes, sir.

Mr. TAVENNER. Mr. Norrick, the committee has information indicating that you are in a position to be of assistance to it regarding the activities of the Communist Party at Youngstown, in the place of your employment. So will you tell the committee, please, what type of Communist activities are being engaged in there at this time?

(The witness conferred with his counsel.)

Mr. NORRICK. I would like to ask again if this committee will clarify a few things. In the first place, I am losing time, yesterday and today to be here, and I understand that the committee—the Congress pays us a very small sum for attending this hearing.

Mr. TAVENNER. Yes. Whether or not you answer questions you are paid your attendance fee.

Mr. NORRICK. How much?

Mr. TAVENNER. You will have to ask——

Mr. NORRICK. I tried to find out.

Mr. TAVENNER. You mean your testimony is going to be based upon the amount of payment that you receive as a witness?

(The witness conferred with his counsel.)

Mr. NORRICK. This matter of pay——

Mr. TAVENNER. We do not gage the payment of fees according to what a witness says on the witness stand. He is entitled by law to certain fees and those are paid whether he testifies or whether he does not.

Mr. NORRICK. I am not interested in that.

Mr. TAVENNER. Let's proceed to answer the question, then.

Mr. NORRICK. But I came here by subpena.

The CHAIRMAN. That is right.

Mr. NORRICK. I had to come.

The CHAIRMAN. That is right.

Mr. NORRICK. And I had to lose the time and it is important to me. I don't want to lose any time.

Mr. TAVENNER. Will you answer the question?

Mr. NORRICK. Repeat it, please.

Mr. TAVENNER. Will you read him the question?

(Record read by the reporter.)

Mr. NORRICK. I want to confer with my counsel.

(The witness conferred with his counsel.)

Mr. NORRICK. Mr. Chairman, I refuse to answer that question at this time because I am not a lawyer and you fellows are old hands at this game.

Mr. TAVENNER. I didn't ask any legal question.

Mr. NORRICK. If you please——

Mr. TAVENNER. I didn't ask you for a legal opinion; I asked you for a pure factual statement.

Mr. NORRICK. Lots of things have happened out of this committee if what I read in the papers is true. A lot of people lost their jobs. A lot of people have been cited and prosecuted, and I have been reading some of the decisions of the Supreme Court on them that were prosecuted.

The CHAIRMAN. A lot of workers lost their lives, too, in Hungary as a result of this conspiracy that we are trying to find out about.

(The witness conferred with his counsel.)

Mr. NORRICK. I don't know anything about Hungary.

The CHAIRMAN. You read the papers. You said you read the papers. You can find out very easily all about Hungary.

(The witness conferred with his counsel.)

Mr. NORRICK. I decline on the first amendment and I don't think it is pertinent to this committee's investigation, and from reading the Watkins decision I don't think this committee—I think that they confirmed in this Supreme Court decision that I don't have sufficient time to consult on these questions. I think it is written in this decision, if I can read it, maybe I am wrong.

The CHAIRMAN. You need not bother. I know you are going to do that. But your lawyer did not hand you the decision that followed the Watkins decision.

Mr. NORRICK. My lawyer didn't give me this decision.

The CHAIRMAN. In the first place, let me read you what the law is now. This is the later pronouncement.

Mr. MEYERS. May I ask from what you are reading?

The CHAIRMAN. "In the first place, we believe that if the Court intended to strike down the resolution"—that is, the resolution creating this committee—"it would have said so in so many words."

So you are reading the wrong law there.

Mr. NORRICK. What decision are you reading from, sir?

The CHAIRMAN. What difference does it make? You are not a lawyer.

Mr. NORRICK. I know that. I know that.

The CHAIRMAN. I am reading what the law is. I am telling you what the law is.

Mr. NORRICK. You are reading a decision.

The CHAIRMAN. I am not charging you for it, either.

Mr. NORRICK. You might at the end.

The CHAIRMAN. Proceed, Mr. Tavenner.

Mr. NORRICK. From what court, sir?

The CHAIRMAN. Never mind. Go ahead, Mr. Tavenner.

Mr. TAVENNER. Mr. Norrick, you said you didn't believe the question I asked you was pertinent. You are not seriously contending that you do not see the pertinency of that question are you?

(The witness conferred with his counsel.)

Mr. NORRICK. Yes.

Mr. TAVENNER. Aren't you just parroting what you say you read in a decision of the Supreme Court without any relationship to the factual situation that exists here?

(The witness conferred with his counsel.)

Mr. NORRICK. I don't understand.

Mr. TAVENNER. Well, you have said you didn't understand the pertinency of the question, when the question on its face shows its pertinency, and I can't believe you are in good faith raising the question of pertinency.

(The witness conferred with his counsel.)

Mr. TAVENNER. If you are honest in it, I will explain it.

Mr. NORRICK. Please explain.

Mr. TAVENNER. This committee through its chairman has stated that the purpose of this hearing is to receive testimony regarding the techniques and tactics of the Communist Party in infiltration into basic industry in this area, of which Youngstown is a part, and that it will receive testimony regarding the extent, the objects, and the purpose of Communist Party propaganda in basic industry. That is what the subject of this inquiry is. Now, I ask you the question, as to what you know about Communist Party activities in this area, which is the exact subject of this——

(The witness conferred with his counsel.)

Mr. TAVENNER (continuing). Wait a minute—of this inquiry.

Mr. SCHERER. I think counsel for the witness should let the witness at least listen to Mr. Tavenner's question before he tells him what to say. I have been watching counsel putting words into the witness' mouth.

Mr. MEYERS. You have been watching me but don't know what I said to him. I said to him "Let him finish the question," and I also told him he can then ask me for advice.

Mr. SCHERER. All right.

Mr. TAVENNER. Now, the reasoning of the committee is this: That if you have information regarding the activities of the Communist Party, and we ask you to give it to us—that directly relates to this subject matter of this hearing—the two are practically the same thing.

The question that I asked you and the subject are virtually the same thing.

Mr. NORRICK. But you don't explain what you mean by infiltration.

Mr. TAVENNER. Is that your trouble?

(The witness conferred with his counsel.)

Mr. TAVENNER. Now, you say you don't understand what is meant by infiltration. Infiltration means that a member of the Communist Party desires to become employed in an industry and to impart in that industry the Communist Party program as he receives it and is directed.

(The witness conferred with his counsel.)

Mr. TAVENNER. Now my question, you recall, related to Communist Party activities in your particular group at Youngstown. Now I think I have explained fully enough the pertinency of the question. And I will ask the chairman, unless he thinks otherwise, to direct you to answer.

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. NORRICK. I decline to answer that on the first amendment and I don't think it is pertinent to the committee's—I don't think the committee has power to ask me that question under the first amendment and—

(The witness conferred with his counsel.)

Mr. NORRICK (continuing). And the Committee on Un-American Activities, as a whole or the subcommittee, is authorized from time to time, to make investigations as to the extent, character, and objects of the un-American propaganda activities and so forth.

The CHAIRMAN. What are you reading from?

Mr. MEADERS. That is what we are asking.

Mr. NORRICK. The Supreme Court decision.

It would be difficult to imagine a less explicit authorizing resolution.

That is the Supreme Court, not me.

Who can define the meaning of "un-American"? What is that single, solitary, "principle of the government as guaranteed by our Constitution"?

There is no need to dwell upon the language, however. At one time, perhaps, the resolution might have been read narrowly to confine the committee to the subject of propaganda. The events that have transpired in the 15 years before the interrogation of petitioner make such a construction impossible at this date.

I think I am within my rights.

The CHAIRMAN. That is the Watkins decision?

Mr. NORRICK. Yes, sir.

The CHAIRMAN. This is a decision that is dicta. You ought to know what I mean by that.

Mr. NORRICK. No.

The CHAIRMAN. Go ahead.

Mr. NORRICK. I don't understand what you mean.

The CHAIRMAN. You are telling me, a lawyer, what the law is?

Mr. NORRICK. No. Far from it.

(The witness conferred with his counsel.)

Mr. NORRICK. I am just trying to keep from getting cited for perjury, from some of these paid witnesses. You might get a witness to say anything.

The CHAIRMAN. That is neither the policy of this committee, nor the practice of this committee, nor of any Government agency.

Go ahead, Mr. Tavenner.

Mr. TAVENNER. Are you a member of the Communist Party at this time?

Mr. NORRICK. I refuse to answer for the reasons already given.

Mr. TAVENNER. Haven't you been in the leadership of the Communist Party for a number of years in the Youngstown plant?

Mr. NORRICK. I refuse to answer for the reasons already given.

The CHAIRMAN. You are directed to answer that question.

Mr. NORRICK. I refuse for the reasons given.

Mr. TAVENNER. Are you familiar with the practice of the Communist Party in bringing in young men from eastern colleges who have received excellent educational training and who are very bright young men to take menial positions in labor with a view of building themselves up from the grassroots, so to speak, to become labor union leaders under the influence of the Communist Party?

(The witness conferred with his counsel.)

Mr. NORRICK. I refuse to answer for the reasons already given.

Mr. TAVENNER. Are you acquainted with Edward Yellin?

(The witness conferred with his counsel.)

Mr. NORRICK. I refuse to answer that question for the reasons already given. It is broad and far reaching. You might ask me to name a lot of them in the county. I have been here a long time. I don't want to name a lot of them. I can't name a lot of them.

Mr. TAVENNER. Well, can you name him? I am not asking you about a lot of people.

(The witness conferred with his counsel.)

Mr. NORRICK. I refuse for the reasons I have already given you, sir.

Mr. TAVENNER. Do you know Robert Kates?

Mr. NORRICK. Same answer.

Mr. TAVENNER. Do you know Robert Lehrer?

(The witness conferred with his counsel.)

Mr. NORRICK. Same answer.

Mr. TAVENNER. Do you know Al Sanger?

Mr. NORRICK. Same answer.

Mr. SCHERER. The fact is, Witness, that all of these people that counsel just named are engaged with you presently in promoting Communist Party propaganda and activities within steel, is that not a fact?

(The witness conferred with his counsel.)

Mr. NORRICK. I refuse to answer on the same grounds I answered before.

Mr. TAVENNER. Are you acquainted with Katherine Hyndman?

Mr. NORRICK. I refuse on the same grounds that I stated before.

Mr. TAVENNER. Who is the head of the Communist Party at this time in Gary?

(The witness conferred with his counsel.)

Mr. NORRICK. I decline to answer on the same grounds as stated before.

Mr. TAVENNER. Is the Communist Party at this time endeavoring to reorganize and strengthen its activities within basic industry?

(The witness conferred with his counsel.)

Mr. NORRICK. I will have to refuse to answer for the reasons already given.

The CHAIRMAN. You do not have to. You are not under any compulsion. Do you refuse to answer?

(The witness conferred with his counsel.)

The CHAIRMAN. I direct an answer to that question.

Mr. NORRICK. I don't think that the committee has the power to inquire into that for the reasons I have given.

The CHAIRMAN. Do you feel honestly that this committee has no power to inquire into the question of whether or not the Communists are attempting to take over the labor unions in the steel industry? Do you honestly feel that?

(The witness conferred with his counsel.)

Mr. NORRICK. Well, I think that is what the Supreme Court says. I think that is what the Constitution says. So I feel that I have them rights.

The CHAIRMAN. You better stick to your last ones.

Mr. TAVENNER. I have no further questions.

The CHAIRMAN. All right. Call your next witness.

Mr. TAVENNER. Mr. Victor Malis.

The CHAIRMAN. Raise your right hand, please.

Do you swear the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MALIS. I do.

TESTIMONY OF VICTOR MALIS, ACCOMPANIED BY COUNSEL, IRVING MEYERS

Mr. TAVENNER. Will you state your name, please?

Mr. MALIS. Victor Malis.

Mr. TAVENNER. Will counsel identify himself for the record, please.

Mr. MEYERS. My name is Irving Meyers. I am from Chicago.

At this time I would like to call to the committee's attention that I sent a telegram on Saturday last requesting that an executive session be held in lieu of this open session in reference to this witness and others. And I would like to have that, I repeat the request. I would like to have it rendered of record and I would like to have an answer to my request.

The CHAIRMAN. In view of the fact that the telegram has never been received by the chairman of this committee, it was delivered in Washington while the chairman was in Gary, Ind., and because no opportunity has been had to study it to determine whether or not it was sent in good faith, the request to delay or defer hearing this witness is denied.

Mr. MEYERS. I didn't ask to defer it or delay. I merely asked for an executive session and you had the telegram in your hands yesterday, a copy of it, which I presented in another matter.

The CHAIRMAN. A copy, yes.

Mr. MEYERS. Yes, and I sent it on Saturday.

The CHAIRMAN. I said the telegram will be considered. Go ahead, Mr. Tavenner.

Mr. TAVENNER. When and where were you born, Mr. Malis?

Mr. MALIS. Gary, Ind.

Mr. TAVENNER. What is the date of your birth?

Mr. MALIS. October 30, 1912.

Mr. TAVENNER. What is the nature of your employment?

Mr. MALIS. Steel worker.

Mr. TAVENNER. How long have you been a steel worker?

Mr. MALIS. Well, all of my adult life.

Mr. TAVENNER. Did you serve in the Armed Forces of the United States?

(The witness conferred with his counsel.)

The CHAIRMAN. You are directed to answer that question.

Mr. MEYERS. What was that question?

Mr. MALIS. Repeat that question.

The CHAIRMAN. If you would pay some attention to us you would know what this is all about, Mr. Malis.

Mr. TAVENNER. My question was whether or not you served in the Armed Forces of the United States.

Mr. MALIS. Yes, I did.

Mr. TAVENNER. Over what period of time?

Mr. MALIS. From April 1941 to October 1945.

Mr. TAVENNER. So with the exception of the period you were in the armed services you have been an employee in steel at least from 1940 until the present time, haven't you?

(The witness conferred with his counsel.)

Mr. MALIS. By far the biggest part.

Mr. TAVENNER. Was there some part of that time when you were employed elsewhere?

(The witness conferred with his counsel.)

Mr. MALIS. Yes. I worked somewhere else.

Mr. TAVENNER. When and where was that?

(The witness conferred with his counsel.)

Mr. MALIS. I am not too sure. Several months in the year of 1950.

Mr. TAVENNER. Where did you work during that period?

(The witness conferred with his counsel.)

Mr. MALIS. I don't think it is pertinent to this committee and I am going to exercise my right under the first amendment. I don't think this committee has got any right to infringe on my thinking and my political beliefs.

The CHAIRMAN. We are not asking you about your political beliefs at all. Are you anticipating a question when you say that?

(The witness conferred with his counsel.)

The CHAIRMAN. We are merely asking where you were employed, not whether or not you were a Communist.

Mr. MALIS. I refuse to tell you that because I don't think it is within your power to ask me that.

Mr. SCHEER. I ask you to direct the witness to answer the question.

The CHAIRMAN. You are directed to answer the question—where you were employed.

Mr. MALIS. Pardon?

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with counsel.)

Mr. MALIS. Well, for 3 or 4 months in 1950 I did not work in the steel industry, and I just refuse to answer the question.

The CHAIRMAN. Were you an employee then of the Communist Party? Is that why you refuse to answer?

(The witness conferred with his counsel.)

Mr. MALIS. I worked in a restaurant. After that I am using my first amendment.

Mr. SCHERER. What is that?

Mr. MALIS. First amendment rights.

Mr. TAVENNER. I think, Mr. Chairman, we better swear in counsel.

Mr. SCHERER. I am beginning to think so, too.

Mr. MEYERS. I must tell you I represent a steel worker who is not too literate. He certainly knows nothing of the law. He certainly doesn't understand your purposes because the Supreme Court doesn't quite understand it.

Mr. TAVENNER. He is the one that knows the facts, though.

Mr. MEYERS. He doesn't understand your questions.

The CHAIRMAN. We are not asking him any legal questions. We are asking him questions of fact.

Mr. MEYERS. But your questions may carry legal implications.

The CHAIRMAN. Well, have you read the rules of this committee?

Mr. MEYERS. I have.

The CHAIRMAN. I wish you would observe them.

Mr. MEYERS. I intend to and try to.

The CHAIRMAN. Don't interrupt, Counsel. Don't prevent the witness from listening to the questions that are being propounded and don't put the answers in his mouth.

Mr. MEYERS. Will you ask my witness if I am doing that?

The CHAIRMAN. I do not have to. I can see you telling him. I am not entirely blind.

Mr. MEYERS. I am sorry. You are misinterpreting what occurs.

The CHAIRMAN. Go ahead, Mr. Tavenner.

Mr. TAVENNER. You state, then, that you worked in a restaurant during those 3 or 4 months in 1950, is that what I understood you to say?

Mr. MALIS. Yes, I did.

Mr. TAVENNER. Where was that restaurant located?

(The witness conferred with his counsel.)

Mr. MALIS. I refuse to answer that under the first amendment.

Mr. TAVENNER. Whose restaurant was that?

(The witness conferred with his counsel.)

Mr. MALIS. I refuse to answer.

Mr. TAVENNER. Why?

(The witness conferred with his counsel.)

Mr. MALIS. I just refuse to answer under the first amendment.

Mr. SCHERER. I ask you to direct the witness.

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. TAVENNER. Did you give up fourteen years of seniority in your employment in order to take that three months job?

(The witness conferred with his counsel.)

Mr. MALIS. I think under the first amendment this committee isn't empowered to ask me that question. Therefore, I use the first amendment.

The CHAIRMAN. Wait a minute. You are directed to answer that question. And may I say to you under the law if you assume something improperly then you must answer the consequences. I direct you to answer this last question.

(The witness conferred with his counsel.)

Mr. MALIS. I repeat that I don't think that this committee has a right to ask me that type of question, and I would also like to state that from time to time I would like to confer with my attorney here because I

The CHAIRMAN. We have no objection to that.

Mr. MALIS. I can't face a bunch of smart men like you.

The CHAIRMAN. Before you have a chance to confer with him he leans over and tells you what to say.

Mr. MALIS. I am for it.

The CHAIRMAN. Of course you are. I can understand that.

Mr. SCHEER. Mr. Chairman, I think the record should reflect that on practically every question that has been asked this witness there has been a lengthy conference between him and his counsel before he has answered.

Mr. MEYERS. I would dispute the length of your reference. It is true that we confer frequently but I have a person unlettered in law.

The CHAIRMAN. I could understand how important it would be to get legal advice for the question where you were employed for a few months. I can understand that.

Go ahead, Mr. Tavenner. Ask the next question.

Mr. TAVENNER. Did the Communist Party meet in its meetings at the location of this restaurant which you operated for a period of 3 months?

(The witness conferred with his counsel.)

Mr. MALIS. I decline on the first amendment.

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. MALIS. I decline for all the reasons I have stated.

Mr. TAVENNER. Were you induced by the Communist Party to undertake the management of that restaurant so that it would have a place to meet?

(The witness conferred with his counsel.)

Mr. MALIS. I refuse for the same reason as given before.

Mr. TAVENNER. Was the Communist Party at that particular time, 1950, having difficulty in maintaining a place where it could meet in secrecy?

(The witness conferred with his counsel.)

Mr. MALIS. Same answer as before.

Mr. TAVENNER. For what reason did you terminate your employment, or for what reason was your employment terminated at that restaurant?

(The witness conferred with his counsel.)

Mr. MALIS. Same answer.

Mr. TAVENNER. Was the name of the restaurant at which you worked the Gary Cooperative Restaurant at 1428 Broadway, Gary, Ind.?

Mr. MALIS. Same answer on that.

The CHAIRMAN. You are directed to answer the question.

Mr. MALIS. I have to repeat I am using the same answer.

The CHAIRMAN. All right.

Mr. TAVENNER. Will you tell the committee, please, what means are being used by the Communist Party at this time, that is, right now, to strengthen its hold in labor unions in Gary?

(The witness conferred with his counsel.)

Mr. MALIS. I refuse to answer that question for the same reasons I have stated before.

Mr. TAVENNER. Could I have a direction?

The CHAIRMAN. You are directed to answer the question.

Mr. MALIS. I still refuse.

Mr. TAVENNER. Are you at this time an active leader in the Communist Party in Gary, Ind.?

(The witness conferred with his counsel.)

Mr. MALIS. Same answer.

Mr. TAVENNER. Could I have a direction?

The CHAIRMAN. You are directed to answer the question, Mr. Malis.

Mr. MALIS. Just a minute.

(The witness conferred with his counsel.)

Mr. MALIS. I refuse to answer that, using the first amendment and the other reasons I have stated.

Mr. SCHERER. Did the other reasons include the use of the fifth amendment?

(The witness conferred with his counsel.)

Mr. MALIS. Well, I would like to have someone clarify the fifth amendment. I really don't know too much about the fifth amendment.

Mr. SCHERER. You have a lawyer to clarify the fifth amendment. He has been clarifying everything else.

(The witness conferred with his counsel.)

Mr. MEYERS. You objected to my attempts before.

Mr. SCHERER. No; just on telling him what to say on factual questions, Counsel.

(The witness conferred with his counsel.)

Mr. MEYERS. There is a due process in the first amendment that he doesn't understand, but he doesn't waive that, but if you are talking about the——

The CHAIRMAN. That due process clause is in the fifth amendment.

Mr. MEYERS. In the fifth, I mean.

The CHAIRMAN. You said the first.

Mr. MEYERS. I meant the fifth. So he doesn't waive that.

The CHAIRMAN. All right.

Mr. MEYERS. Nor does he waive the section which says that every man shall be protected as to his life, liberty, or property. Nor does he waive some other section, if you please, but he certainly is not asserting his privilege against self-incrimination if that is what you mean.

Is that right?

Mr. MALIS. That is correct.

The CHAIRMAN. This is not as funny as you think it is.

Mr. MALIS. I just laughed because they made me laugh. They laughed back there. I know it is not funny.

The CHAIRMAN. In a few weeks the Congress will be called upon to appropriate huge sums of money in another phase of this cold war. I say another phase advisedly. Why don't you help us in the phase that we are responsible for combating?

(The witness conferred with his counsel.)

The CHAIRMAN. I withdraw that. Go ahead and ask a question, Mr. Counsel.

Mr. TAVENNER. What is the strength of the Communist Party membership, or in other words, what is the size of the membership of the Communist Party in your union now?

(The witness conferred with his counsel.)

Mr. MALIS. I decline to answer that question.

Mr. TAVENNER. May I have a direction?

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. MALIS. I decline for all the reasons I have given.

Mr. TAVENNER. One of those reasons was that of pertinency and here I think I will explain a little something, in addition to what has already been said, and that is that this committee has for consideration a House resolution which provides for the amendment of the Communist Control Act of 1954, placing a penalty under section 4 of that act to remain a member of the Communist Party with knowledge of its purposes.

Now, it is important to this committee and the Congress to obtain the information which it is now asking in order that it may properly consider that bill. That is an additional reason to those already assigned.

May I ask that the witness be directed to answer, Mr. Chairman?

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. MALIS. Well, I didn't attend the opening session yesterday and I wasn't here and I don't understand it. I would like to have it explained to me.

The CHAIRMAN. What would you like to have explained to you?

(The witness conferred with his counsel.)

Mr. MALIS. The purpose of the questioning me. The purpose of this committee.

Mr. TAVENNER. Have you read the opening statement that the chairman made or had it read to you?

(The witness conferred with his counsel.)

Mr. MALIS. No, I haven't.

Mr. SCHERER. Counsel was derelict in his duty, then.

Mr. TAVENNER. Yes.

Has your counsel explained it to you?

Mr. MALIS. No, he hasn't.

Mr. TAVENNER. All right. I hand it to you now.

(Statement handed to witness.)

Mr. MEYERS. This is the first time counsel has seen it.

Mr. TAVENNER. We will let you examine it.

Mr. MEYERS. Have you seen it before?

Mr. SCHERER. It is an indication to me, counsel, that since you are representing witnesses before this committee that you would have gotten one of those copies.

The CHAIRMAN. It was read yesterday.

Mr. MEYERS. It may have been read yesterday but this is the first time I have seen it and my witness was not here when it was read. Now I will turn it over to him to read.

The CHAIRMAN. You heard it read, didn't you?

Mr. MEYERS. I heard it read but he didn't, and I will explain it.

The CHAIRMAN. Then you are in a position to advise him.

Mr. TAVENNER. Let him read it over the lunch hour and then call him back.

The CHAIRMAN. We will adjourn now and over the lunch hour you can read it and you will be back after lunch having read it and being advised fully.

Mr. MEYERS. I will ask my client to read it over lunch time.

(Whereupon, at 1:03 p. m., the subcommittee recessed, to reconvene at 2 p. m. the same day.)

AFTERNOON SESSION—TUESDAY, FEBRUARY 11, 1958

(Members present at the convening of the session were Congressmen Walter and Scherer.)

The CHAIRMAN. The committee will be in order.

May I again admonish you not to smoke.

Mr. Malis will resume the stand, please.

TESTIMONY OF VICTOR MALIS, ACCOMPANIED BY COUNSEL, IRVING MEYERS—Resumed

Mr. TAVENNER. Mr. Malis, you were directed to answer a question at which time you answered that you were not present during the making of the opening statement and you desired to see it.

We made it available for you during the noon recess. Have you read the statement, the chairman's opening statement?

Mr. MALIS. Yes, I read it and certain things are very vague to me here. I underlined it. I can't understand it and I asked my attorney——

Mr. SCHERER. He can't understand it?

Mr. MALIS. He don't seem to understand it, either.

Shall I read it to you?

The CHAIRMAN. Don't bother to read it. I wrote it.

Mr. TAVENNER. You have read the statement of the chairman and you have studied it and you conferred with your counsel about it?

Mr. MALIS. Yes, sir.

Mr. TAVENNER. Is there any question now in your mind as to the pertinency of the question that was asked of you?

(The witness conferred with his counsel.)

Mr. MEYERS. What question was that, Mr. Tavenner?

Mr. TAVENNER. The question which he refused to answer, and I believe I will ask the reporter to read it back to the witness:

(The record was read as follows:

("What is the strength of the Communist Party membership, or, in other words, what is the size of the membership of the Communist Party in your union now?")

(The witness conferred with his counsel.)

Mr. MALIS. I refuse to answer that for the reasons I have given before.

The CHAIRMAN. I think in view of the fact that you had so much time to reflect over the question and to read the purposes that I will have to direct you to answer that question.

(The witness conferred with his counsel.)

Mr. MALIS. I am sorry, Mr. Chairman, but I will have to refuse again.

The CHAIRMAN. Yo do not have to. You are not under any compulsion.

Mr. MALIS. Well, I will refuse.

The CHAIRMAN. You refuse. All right.

Mr. TAVENNER. Will you tell the committee, please, whether to your knowledge young men have been brought in by the Communist Party to the Gary, Ind., area and placed in work in labor unions since 1949?

(The witness conferred with his counsel.)

Mr. MALIS. Well, the answer is the same as before. I refuse to answer it.

Mr. TAVENNER. Are you acquainted with Edward Yellin?

Mr. MALIS. I refuse to answer it.

Mr. TAVENNER. Are you acquainted with Robert Kates?

Mr. MALIS. Same answer.

Mr. TAVENNER. Are you acquainted with Robert Lehrer?

Mr. MALIS. Refuse to answer.

Mr. TAVENNER. Are you acquainted with Al Samter?

Mr. MALIS. Refuse to answer.

Mr. TAVENNER. Do you know whether or not Katherine Hyndman, who was ordered deported in 1953, is now actively engaged in Communist Party organizational work in Gary, Ind.?

(The witness conferred with his counsel.)

Mr. MALIS. I refuse to answer that under the first amendment.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. The witness is excused.

Call your next witness.

Mr. TAVENNER. Mr. Chris Malis.

The CHAIRMAN. Will you raise your right hand?

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MALIS. I do.

TESTIMONY OF CHRIS MALIS, ACCOMPANIED BY COUNSEL, IRVING MEYERS

Mr. TAVENNER. Will you state your name, please?

Mr. MALIS. My name is Chris Malis.

Mr. TAVENNER. Are you also known as Cash Malis?

Mr. MALIS. Yes, I have had that nickname for some years.

Mr. TAVENNER. It is noted that you are accompanied by the same counsel who accompanied the previous witness.

Mr. MEYERS. My name is Irving Meyers. I am of Chicago, Ill., and at this moment I should like to call your attention to the fact that I sent a telegram last Saturday requesting an executive hearing and a copy of which telegram I gave to the chairman yesterday. On behalf of this witness I request such an executive hearing.

The CHAIRMAN. Despite the fact that I think you sent the telegram after business hours so that I would not get it, I am going to grant your request, so the witness is excused.

Mr. TAVENNER. And we will fix an executive session for him.

The CHAIRMAN. And will not waste the time of the committee here.

You are still under the subpena. We will let you know when the executive session will be held so you be here when we adjourn and we can tell you.

You will know where he is?

Mr. MEYERS. Will you send me a notice, as well?

The CHAIRMAN. You will be here, won't you?

Mr. MEYERS. I will be here all day.

The CHAIRMAN. That is fine. We will oblige you.

Mr. MALIS. Mr. Chairman, I am scheduled to go to work this evening. I don't know how long you figure to have me here. If it is going to last long I must notify the plant that I work for.

The CHAIRMAN. I don't know. Your lawyer has requested that you be given an executive hearing and we granted his request. If you are disappointed that we did, I can't help it.

Mr. TAVENNER. If there is time we will arrange to do it this afternoon.

The CHAIRMAN. Call your next witness.

Mr. TAVENNER. Mr. Walter Malis.

The CHAIRMAN. Will you raise your right hand, Mr. Malis?

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MALIS. I do.

TESTIMONY OF WALTER MALIS, ACCOMPANIED BY COUNSEL, IRVING MEYERS

Mr. TAVENNER. Will you state your name, please, sir?

Mr. MALIS. My name is Walter Malis.

Mr. TAVENNER. Are you also known by the name of Sy?

Mr. MALIS. Yes, sir.

Mr. TAVENNER. It is noted that you are accompanied by the same counsel.

Mr. MEYERS. My name is Irving Meyers. I am from Chicago. I would like to call this committee's attention to the fact that on Saturday last I sent a telegram requesting that in lieu of this hearing a hearing be held in executive hearing and I would like to have a response to my request.

The CHAIRMAN. The response is that we will be very glad to hear your client in executive session. So if you will just step aside, we will let you know when we can hear him.

Call your next witness.

Mr. TAVENNER. Mr. Willard Malis.

The CHAIRMAN. Raise your right hand, please.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MALIS. I do.

The CHAIRMAN. Sit down, please.

TESTIMONY OF WILLARD MALIS, ACCOMPANIED BY COUNSEL, JUSTIN WAITKUS

Mr. TAVENNER. What is your name, please, sir?

Mr. MALIS. Willard Malis.

Mr. TAVENNER. Do you have a nickname, "Sully"?

Mr. MALIS. That is right.

Mr. TAVENNER. Will counsel accompanying the witness please identify himself for the record?

Mr. WAITKUS. My name is Justin Waitkus, 569 Broadway, Gary, Ind.

Mr. TAVENNER. When and where were you born, Mr. Malis?

Mr. MALIS. Born in Gary, Ind., on March 28, 1916.

Mr. TAVENNER. You now reside in Gary?

Mr. MALIS. All of my life.

Mr. TAVENNER. How are you presently employed?

Mr. MALIS. I am presently employed as a loader in the 40-inch blooming mill in Gary works of the U. S. Steel Corp.

Mr. TAVENNER. How long have you been so employed?

Mr. MALIS. Since May of 1936.

Mr. TAVENNER. Will you state what your formal educational training has been?

Mr. MALIS. Normal grade school education and graduate of high school.

Mr. TAVENNER. Mr. Malis, have you at any time been affiliated with the Communist Party in Gary, Ind.?

Mr. MALIS. Well, you might say remotely. I have belonged to certain—what is now called—front organizations. But as far as I know I never signed an application blank to join the party or never attended closed meetings and never considered myself under Communist Party discipline.

Mr. TAVENNER. You say you were a member of certain front organizations?

Mr. MALIS. That is right. What I know now to be listed as front—or, I don't know. You know the term. I don't know.

Mr. TAVENNER. Those were organizations in which the Communists had either taken over control or had infiltrated.

Mr. MALIS. Something on that nature.

Mr. TAVENNER. What were those organizations to which you refer?

Mr. MALIS. Well, one was a fraternal organization called the IWO, which paid insurance and like your other fraternal organizations. The other was a Lithuanian fraternal organization.

Mr. TAVENNER. What was its name?

Mr. MALIS. The initials were LDS, which mean something in the Lithuanian language. My mother enrolled me for the insurance benefits.

Mr. TAVENNER. Mr. Lautner, who was the first witness during this hearing, explained to the committee how on a national level the work of the Communist Party was planned to use the IWO in Communist Party activities. Will you tell us whether or not any member of the Communist Party was instrumental in having you join the IWO?

Mr. MALIS. No. Like I said, my mother enrolled me in this and she was the one was instrumental in entering me in there.

Mr. TAVENNER. How long did you remain a member of the IWO?

Mr. MALIS. Well, to the best of my knowledge, approximately 1939 or 1940.

Mr. TAVENNER. I am not certain that I understood just what you meant by being a member of front organizations. Were any of these organizations in which you were a member engaged in Communist Party activities within the steel unions?

Mr. MALIS. My honest answer to that is that I never saw any such activity. It might have been there and I didn't see it. I don't know.

Mr. TAVENNER. Is Victor Malis a brother of yours?

Mr. MALIS. That is right.

Mr. TAVENNER. Do you know of his employment at the restaurant which he testified about, the cooperative restaurant?

Mr. MALIS. I heard that he left his employment to go to work in a restaurant, yes.

Mr. TAVENNER. Do you know the circumstances under which he was induced to leave that employment?

Mr. MALIS. Absolutely not. I have heard all kinds of rumors and all I could say is I would be quoting a rumor if I told you I knew.

Mr. TAVENNER. You were not closely enough identified with the matter to have personal knowledge of your own?

Mr. MALIS. That is true.

Mr. TAVENNER. Did you at any time attend Communist Party meetings?

Mr. MALIS. Not to my knowledge.

Mr. TAVENNER. By that do you mean to indicate you attended meetings as to which there is some question in your mind whether or not they were Communist Party meetings?

Mr. MALIS. Yes. As I stated before, I was in these other organizations and I wouldn't be able to tell you if you would consider this a Communist organization or a front or what you would call it, but I do say that I don't recall of ever signing an application card into the party or attending a meeting, a closed meeting, other than I may have attended a mass meeting sponsored by the party.

Mr. TAVENNER. What was the address of the restaurant which we referred to a moment ago of which your brother was a manager?

Mr. MALIS. I don't know the address, but I know it is a couple of doors north of 13th and Broadway.

Mr. TAVENNER. Did you attend meetings at that place?

Mr. MALIS. Absolutely not.

Mr. TAVENNER. From your statement you are not now a member of the Communist Party?

Mr. MALIS. I am not.

And I would like to say there is a statement here in the paper which you aren't responsible for, but the misconception is there. LaFleur's testimony was given that so and so and so, and my name is listed. It said all of them, LaFleur testified, were members of the Communist Party when he was forced out of the ranks in 1952. Now, that, I want clarified. That is absolutely a falsehood.

Mr. TAVENNER. Were you a member of the Communist Party at any time between 1940 and 1952?

Mr. MALIS. As I said before, I don't ever recall joining the Communist Party and if I never joined I don't see how I could ever get out. You understand what I am saying?

Mr. TAVENNER. Yes. Did you meet with others and discuss Communist Party matters at any time during the period from 1949 to 1952?

Mr. MALIS. I am glad you asked that. And I can categorically state I never engaged in any sort of meeting of such a nature and I never would consider it, and I want that clear for the press and everyone to know, because the subpena that I was served with has blackened my name no end and I want that made clear.

Mr. TAVENNER. Well, you deny, then, ever having had any connection with the Communist Party, either by way of membership or taking part in Communist Party meetings.

Mr. MALIS. I will stand by that.

Mr. TAVENNER. Do you have any knowledge of the holding of Communist Party meetings?

Mr. MALIS. No, I don't.

Mr. TAVENNER. Were you invited to a Communist Party meeting?

Mr. MALIS. I made myself clear to anyone who would listen to me that I was not interested in joining the party, participating in any activities it advocated. I don't know how to put it, but that is the general idea.

Mr. TAVENNER. Why was it that you refused to become a member of the Communist Party when your membership was sought?

Mr. MALIS. Well, as funny as it may seem with the other witnesses that you have questioned, when I got employment——

Mr. SCHERER. Pardon me. When you say "other witnesses you questioned" are you referring to your brothers who just testified?

Mr. MALIS. I think the inference is there. The assumption seemed to be in the public mind, in the press mind, "Here is five solid brothers that are the nucleus of this organization," and I want to put the record straight that it is not so.

Mr. SCHERER. You mean that your brothers are not Communists?

Mr. MALIS. I am not saying that.

Mr. SCHERER. I thought that is what you said.

Mr. MALIS. I am not saying what anyone else is. I am speaking for myself.

Mr. SCHERER. I want it clear, when you were referring to other witnesses, whether you were referring to all the other witnesses called by this committee or your brothers.

Mr. MALIS. No, I was more or less referring to my brothers. It seems to me to be a conspiracy to say, "Here is five brothers that are the center of this whole conspiracy," which is what is in the minds of the public, you might say.

Mr. TAVENNER. No, I don't think we would go that far.

Mr. MALIS. The press seems to.

Mr. TAVENNER. But we are very anxious to know the part that Katherine Hyndman is now playing in the reestablishment of the Communist Party in this area.

Mr. MALIS. I can say I don't know Katherine Hyndman and all I know of her is what I read in the papers.

Mr. SCHERER. You say the only way you know Katherine Hyndman is what you read in the papers?

Mr. MALIS. That is right. What I read in the papers about her.

Mr. SCHERER. You don't know her otherwise?

Mr. MALIS. Absolutely not. I know her face. I seen her face enough. I seen her walking up and down the streets. There has been enough publicity about her that anyone would recognize her.

Mr. TAVENNER. I am interested to know why it is you refused to become a member of the Communist Party when your membership was sought.

Mr. MALIS. Well, I don't know that it was sought. Early in my life, in my adult life, you might say, when I left the teens, I had my mind clear that the American system was the thing for me, and it was better illustrated when I thought I would never get employment in the steel industry because of associations from way back, and when I was hired it was a day I will never forget. It was a day I never expected to see. I got employment in there. I worked for 4 years and got married, raised a family, started to accumulate an estate, or whatever you might call it. I started to establish myself and you just can't beat that.

Mr. SCHERER. Why did you say, Witness, that because of associations way back you thought you would never get a job?

Mr. MALIS. Well, I think——

Mr. SCHERER. What did you mean by that?

Mr. MALIS. I think you are now familiar enough with the name to know there was a certain stigma attached to that name.

Mr. SCHERER. Oh, I see.

Mr. MALIS. And it carried way back to the depression day.

Mr. SCHERER. Were you the youngest of the Malises?

Mr. MALIS. I am next to the youngest.

Mr. TAVENNER. Well, I believe, Mr. Malis, if there is no information you can give us about the activities of the Communist Party or activities in the last five or more years, in this area——

Mr. MALIS. You are right.

Mr. TAVENNER. There is nothing else that I would care to ask you.

Mr. MALIS. I would ask the press to treat me fairly in the press and I think I got enough bad publicity out of this whole deal that the press owes me an apology, listing my name amongst people engaged in subversion and without a clear statement that I am not engaged.

I think I still remain under that cloud. I think the press owes me that.

The CHAIRMAN. I think the statement you made about our system certainly speaks for itself. With all its imperfections it is the best in the world, the best that has ever been devised.

If there are no further questions, the witness is excused.

Mr. MALIS. Thank you.

The CHAIRMAN. Thank you.

Mr. MALIS. Thank you. I am very well treated here. I almost had a heart attack.

The CHAIRMAN. Were you surprised? Were you surprised that you were treated fairly?

Mr. MALIS. Yes. You bet I was.

The CHAIRMAN. You know there has been a drive all over the United States to create the impression that this committee does not treat wit-

besses fairly and the technique is always the same. It does not make any difference who is chairman of this committee, the moment he becomes chairman, that moment there is a question of even the legitimacy of his birth and that carries on so long as he is chairman of the committee. That is a well known tactic in order to try to discredit, first, the chairman, then the committee, and in that way the work of the Congress.

Now, it might be interesting to you, and speaking to a good American as I am——

Mr. MALIS. That is true.

The CHAIRMAN. To know that when this committee was created, there were 42 Members who voted against it and I was one of them. I now find myself chairman of the committee that I voted against creating.

But more significant is the fact that every single time the Congress of the United States has passed on the appropriations for our committee it has either done it by a unanimous vote last year there was one vote against it and this year two votes against. The membership know their colleagues. They know we would not be unfair to anybody.

Mr. MALIS. Thank you very much, sir.

The CHAIRMAN. Thank you, Mr. Malis.

Call your next witness.

Mr. TAVENNER. Mr. Joseph Gyurko.

The CHAIRMAN. Raise your right hand, please.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GYURKO. I do.

TESTIMONY OF JOSEPH GYURKO, JR., ACCOMPANIED BY COUNSEL, IRVING MEYERS

Mr. TAVENNER. Will you state your name, please, sir?

Mr. GYURKO. Joseph Gyurko, Jr.

Mr. TAVENNER. Will you spell your last name?

Mr. GYURKO. G-y-u-r-k-o.

Mr. TAVENNER. Will counsel accompanying the witness please identify himself for the record?

Mr. MEYERS. My name is Irving Meyers. I am a lawyer from Chicago, Ill., and I would like to call the committee's attention to the fact that on Saturday last, I sent a telegram to the chairman asking that if the hearing should be held it should be an executive hearing in place of an open hearing, and I repeat the request this morning.

The CHAIRMAN. At what time was that telegram sent, do you know?

Mr. MEYERS. I don't recall. I sent the girl out of the office around noontime Saturday. She went over, I think, to the Sherman Hotel in Chicago, mailed it to the only address we know you to be at, Washington, and I gave you a copy of that very telegram yesterday in this hearing.

The CHAIRMAN. Of course, I am entitled to my own opinion. I think you waited until after business hours to send it.

Mr. MEYERS. That is not so, but you are entitled to a misconception if you wish.

The CHAIRMAN. I don't care what you think about it. That is what I think you would do and did do it.

We are going to allow your request, and we will go into an executive session now.

In closing the public hearings, I want to express the appreciation of the committee to the officials here, particularly the custodian of this building, Frank O'Bara; Chief of Police, John Foley; the United States marshals; and others who have been of assistance to us.

This is not an easy job. It is distasteful to all of us. There are other things that we would much rather do than sit here and be compelled to listen to the things that the witnesses say.

The committee is adjourned. We will then go into executive session.

(Whereupon, at 2:27 p. m., Tuesday, February 11, 1958, the subcommittee recessed to reconvene in executive session the same day.)

INVESTIGATION OF COMMUNIST INFILTRATION AND PROPAGANDA ACTIVITIES IN BASIC INDUSTRY

(Gary, Ind., Area)

TUESDAY, FEBRUARY 11, 1937

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Gary, Ind.

EXECUTIVE SESSION

The subcommittee of the Committee on Un-American Activities met, pursuant to call, at 2:40 p. m., in the council chamber, Municipal Building, Gary, Ind., Hon. Francis E. Walter (chairman) presiding.

Committee members present: Representatives Francis E. Walter of Pennsylvania, and Gordon H. Scherer of Ohio.

Staff members present: Frank S. Tavenner, Jr., counsel, and Raymond T. Collins, investigator.

The CHAIRMAN. Let the record show that an executive session for the purpose of hearing sundry witnesses subpenaed for the public sessions has been convened.

Mr. TAVENNER. I think you better swear in the witness again.

The CHAIRMAN. Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GYURKO. I do.

TESTIMONY OF JOSEPH GYURKO, JR., ACCOMPANIED BY COUNSEL, IRVING MEYERS

Mr. TAVENNER. What is your name, please, sir?

Mr. MEYERS. Chairman, I am going to object to the presence of two persons seated in the audience, who I don't believe to be members of the committee or members of your staff.

The CHAIRMAN. The objection will be noted on the record.

Mr. MEYERS. May I ask that they be identified?

The CHAIRMAN. Sir?

Mr. MEYERS. I ask that they be identified.

The CHAIRMAN. These are men connected with the Department of Justice.

Mr. MEYERS. This is not a committee of the Department of Justice.

The CHAIRMAN. I understand that. Go ahead, Mr. Tavenner.

Mr. TAVENNER. State your name, please.

Mr. GYURKO. Joseph Gyurko, Jr.

[1] Released by the committee and ordered to be printed.

Mr. TAVENNER. Will counsel accompanying the witness please identify himself?

Mr. MEYERS. My name is Irving Meyers, Chicago, Ill.

Mr. TAVENNER. Mr. Gyurko, you were called in open session before the committee a few moments ago and requested that you be given an executive session, and that request has been honored by the committee.

Mr. MEYERS. Requested in lieu of an open session. We don't request any session, but we want it in lieu of an open session.

Mr. SCHERER. Let us get on.

Mr. TAVENNER. When and where were you born, Mr. Gyurko?

Mr. GYURKO. When?

Mr. TAVENNER. Yes, when—when and where?

Mr. GYURKO. March 15, 1919, in South Chicago, Ill. This district.

Mr. TAVENNER. Where do you reside?

Mr. GYURKO. I reside in Hammond, 3835- 176th Place.

Mr. TAVENNER. How long have you been a resident of Hammond?

Mr. GYURKO. Well, I would have to consult my mother, because I was just a few years old, maybe 1923 or 1924.

Mr. TAVENNER. What is your present employment?

Mr. GYURKO. I work in the steel mills as a steelworker.

Mr. TAVENNER. How long have you worked in that capacity?

Mr. GYURKO. It was 18 years ago last October.

Mr. TAVENNER. While you have been employed in the steel mills at Hammond have you been——

Mr. GYURKO. Hammond, sir?

Mr. TAVENNER. Where did you say—Hammond?

Mr. GYURKO. No, No, I didn't. I did not say Hammond.

Mr. TAVENNER. Where did you say you now reside?

Mr. GYURKO. I live in Hammond.

Mr. TAVENNER. Where are you employed?

Mr. GYURKO. In Inland Steel, Indiana.

Mr. TAVENNER. I beg your pardon. Where is that located?

Mr. GYURKO. Indiana Harbor.

Mr. TAVENNER. That is in Lake County?

Mr. GYURKO. That is right.

Mr. TAVENNER. Indiana?

Mr. GYURKO. That is right.

Mr. TAVENNER. How long have you been employed at Inland Steel?

Mr. GYURKO. It has been 18 years last October.

Mr. TAVENNER. Will you tell the committee, please, whether or not there is at this time an organized group of the Communist Party among the employees of Inland Steel?

(The witness conferred with his counsel.)

Mr. GYURKO. I don't think it is a valid question under the first amendment to ask me on that question. I don't think the committee has a right to come to this community and ask me that question. Under my rights under the first amendment I understand I don't have to answer it.

Mr. SCHERER. I ask that you direct the witness.

Mr. GYURKO. Furthermore, it is not pertinent.

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. GYURKO. Furthermore, it is not pertinent to your powers or your authority.

Mr. TAVENNER. Since he was directed to answer, the witness now says it was not a pertinent question. So he raises that objection.

Mr. MEYERS. He raises more. I don't know if you heard it.

Mr. TAVENNER. Did he raise the fifth amendment?

Mr. MEYERS. No.

Mr. TAVENNER. What other question did he raise after raising the question of pertinency?

Mr. MEYERS. He sought to.

Mr. TAVENNER. I am not asking you. I am asking the witness.

(The witness conferred with his counsel.)

Mr. GYURKO. I don't think you are authorized to do this type of questioning, and I don't think it is pertinent.

Mr. TAVENNER. That is what I understood you to say. You have read the opening statement by the chairman, have you not?

(The witness conferred with his counsel.)

Mr. GYURKO. I didn't read it. No, I didn't read it.

Mr. TAVENNER. A copy was given to your attorney during the noon hour. Did you see it in his possession?

Mr. MEYERS. Were you with me?

Mr. GYURKO. I went out to eat with my wife. I didn't go with him at noon.

Mr. TAVENNER. Your attorney did not call it to your attention?

Mr. MEYERS. Tell him.

Mr. GYURKO. No. I didn't go with him.

Mr. SCHERER. That isn't the question, whether you went with him or not. Did he, or didn't he, call it to your attention?

Mr. TAVENNER. Did he or didn't he?

Mr. GYURKO. No, I said no.

Mr. TAVENNER. It would seem that if you knew you were to be called as a witness and that your counsel requested a copy of this opening statement, if you meant to be raising a question seriously here about pertinency, that you would at least inquire as to the opening statement which the chairman made.

(The witness conferred with his counsel.)

Mr. TAVENNER. Why didn't you do it?

(The witness conferred with his counsel.)

Mr. MEYERS. I might say that the attorney didn't get a copy until today. I heard the statement yesterday but I didn't——

Mr. TAVENNER. Were you in the hearing room just before the noon recess?

Mr. GYURKO. Yes.

Mr. TAVENNER. You heard the question raised there by the witness, Mr. Victor Malis, that he had not seen a copy of the opening statement, and therefore the meeting was adjourned at that time so that he could read it and so his counsel, who is now your counsel, could also have it. You heard all that, didn't you?

Mr. GYURKO. Yes.

Mr. TAVENNER. Then why didn't you examine it during the noon hour?

(The witness conferred with his counsel.)

Mr. SCHERER. Or since?

(The witness conferred with his counsel.)

Mr. GYURKO. If I remember right, when that question came up, you give him a copy and you told him to go read it during lunch hour.

Mr. TAVENNER. That is right.

Mr. GYURKO. You told him to read it.

Mr. TAVENNER. And I gave a copy to his attorney, who is now your attorney.

Mr. GYURKO. Pardon me for interrupting. They were reading it; I wasn't. I went to lunch.

Mr. TAVENNER. You weren't interested in reading it, were you?

(The witness conferred with his counsel.)

Mr. GYURKO. I didn't know I was supposed to read it during lunch hour.

Mr. TAVENNER. Let me tell you briefly ——

Mr. GYURKO. Pardon me——

Mr. TAVENNER. That the chairman announced in his opening statement that the subject of this hearing was the reception of evidence relating to the techniques and tactics of the Communist Party in its infiltration of basic industry and also the extent and character and objects of Communist Party propaganda activities within basic industry. That is the subject under inquiry. The question that was asked you related to your knowledge of Communist Party activities within basic industry now.

That is pertinent because it relates to the very subject which the committee is undertaking to consider. It is self-evident from the nature of the question that it is pertinent to the subject, and it is hard to understand how your objection is based on good faith.

Now with that explanation, Mr. Chairman, I request that the witness be directed to answer.

The CHAIRMAN. Yes. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. GYURKO. First of all, it is pretty vague to me—your line of questioning.

Mr. SCHERER. Did not your counsel just tell you to say that—that it is pretty vague to you? Didn't your counsel just tell you to say that?

(The witness conferred with his counsel.)

Mr. GYURKO. Sir, I have hired this lawyer to be my counsel, and I think I have a right to talk with him.

Mr. SCHERER. No one said you did not have. There is a calculated plan afoot to delay these hearings and harass the committee by you and your lawyer. It is so obvious. Mr. Chairman, I ask you to direct the witness to answer the question.

The CHAIRMAN. You are directed to answer the question.

Mr. SCHERER. If he does not answer, let us go on.

(The witness conferred with his counsel.)

Mr. GYURKO. Your powers and authority are vague, and I still stand on the first amendment.

Mr. TAVENNER. Are you now an active member of the Communist Party?

(The witness conferred with his counsel.)

Mr. GYURKO. Same answer.

Mr. TAVENNER. I have no further questions.

Mr. SCHERER. I think there should be a direction to answer.

The CHAIRMAN. Yes. You are directed to answer that question.

(The witness conferred with his counsel.)

Mr. GYURKO. Same answer.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. All right. Call your other witnesses.

Mr. TAVENNER. Will you call Mr. Chris Malis to come in?

The CHAIRMAN. Mr. Malis, will you raise your right hand? Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MALIS. I do.

TESTIMONY OF CHRIS MALIS, ACCOMPANIED BY COUNSEL, IRVING MEYERS

Mr. TAVENNER. Will you state your name, please?

Mr. MALIS. Chris Malis.

Mr. TAVENNER. Will counsel please identify himself for the record?

Mr. MEYERS. My name is Irving Meyers. I am a lawyer from Chicago.

At this moment I wish to protest the presence of two men who, I understand, are from the Department of Justice sitting in the audience. I understand they are not with the committee, but they are from the Department from Mr. Walter's statement.

The CHAIRMAN. That is right.

Mr. TAVENNER. When and where were you born, Mr. Malis?

Mr. MEYERS. Are they given the right to sit in on this session?

Mr. TAVENNER. Yes. They have been.

Mr. MALIS. I was born in Gary, Ind., April 11, 1918.

Mr. TAVENNER. You were called in open session of the committee and requested a closed session, which request was granted. Why did you request a closed session?

Mr. MALIS. Because I feel that this concerns me alone. I think there has been too much unfair publicity given me before even a single question was asked.

Mr. TAVENNER. If it had been in open session, you would have had an opportunity to have made an open and public denial of any testimony that adversely affected you during the course of the hearing.

Mr. MALIS. I am not the most fluent speaker. I feel like I want to have time to try to gather my thoughts the best I can and also to consult with my counsel, if I found it necessary.

Mr. TAVENNER. You didn't really want to make an open, public statement denying the testimony that had been introduced here regarding you, did you?

(The witness conferred with his counsel.)

Mr. MALIS. I feel that I appeared here as a subpenaed witness. I am not here because I wanted to. I came here because a subpena was served me. I feel that too much publicity has come of this already, and I don't want any further publicity.

Mr. TAVENNER. Mr. Malis, how are you employed?

Mr. MALIS. I am employed in the plate mill of Gary Works.

Mr. TAVENNER. How long have you been employed there?

Mr. MALIS. Since September of 1939, with two and one-half years for service in the United States Navy.

Mr. TAVENNER. During what period of time were you in the United States Navy?

Mr. MALIS. From May of 1943 to November of 1945.

Mr. TAVENNER. Will you tell the committee, please, whether at this time there is an organized group of the Communist Party working among the employees in the Gary plant where you are employed?

(The witness conferred with his counsel.)

Mr. MALIS. Before I answer that question, I would like to set the record straight a little bit. I am not capable of gathering my thoughts as some people are; and, since I have been served this subpena, I have done a lot of thinking about it, and I jotted down a few notes that I would like to read here before I answer that question. I would like to state them here. I think that——

The CHAIRMAN. It is a simple question. You can answer the question.

Mr. MALIS. I feel it possibly can be answered simply. But I feel that there is a lot more involved here than just a simple answer, and I think when I make that answer I want it a little clearer, a little more clearer, why I arrived at such an answer.

The CHAIRMAN. Let us have your answer first and then you can explain your answer.

Mr. MALIS. Explain it immediately after I make the answer?

The CHAIRMAN. Yes.

Mr. MALIS. I refuse to answer that question on the grounds that it is an invasion of my rights as guaranteed under the first amendment to the Constitution, that my rights of freedom of speech and of association are my concern and beyond the scope of this committee. I also feel that you do not have the authority to ask these questions under the powers given to you by Congress. I also believe that the question doesn't have any relationship to whatever powers you are given by Congress.

And I would like to state here in a few words just a little why I am prompted to make the answer that I am.

Mr. TAVENNER. I do not understand it as an answer. I understand it as a refusal to answer.

Mr. MALIS. I refuse to answer on the grounds of my rights under the first amendment.

The CHAIRMAN. All right. You refuse to answer that question. Ask the next question.

Mr. MALIS. You told me that I could give my statement as soon as I answered the question, and you have just said that I have answered the question.

The CHAIRMAN. You have not answered the question.

Mr. MALIS. I just asked you just prior to answering, if I could read my brief statement here, and you said I would be given a chance.

The CHAIRMAN. You are not explaining why you did not answer the question. You just want to read a statement.

Mr. MALIS. Yes.

The CHAIRMAN. Go ahead. Read the statement.

Mr. MALIS. Yes. That is right.

Mr. MEYERS. He said go ahead.

Mr. MALIS. I am here reluctantly in response to the subpena served me. The publicity already given the subpena tends to cast a veil of

suspicion over not only me but my family, my relatives who carry the same name, and possibly on other people I consider my friends.

Mr. SCHEER. Just a minute. Let me interrupt. Is that [illegible] that you talk about unfounded?

Mr. MAUS. I believe it is.

Mr. SCHEER. Is it wrong?

Mr. MAUS. I believe the mere fact that I got a subpena which did not say what I was accused of, it merely stated that I was—

The CHAIRMAN. You are not accused of anything. This is a congressional inquiry. No one is charged with anything at all. We are seeking information.

Mr. MAUS. Mr. Chairman, I feel that there has been a lot of publicity already, that maybe it is beyond your control. But, nevertheless, the newspapers have carried articles and people that know me from the labor union and my neighbors, the people I work with, are already starting to make impressions on me just from the fact that I have a subpena.

Mr. SCHEER. We will settle it quickly. You have been identified as a member of the Communist Party. Do you deny that testimony before this committee is true? If you do, then perhaps we can wipe away the suspicion you talk about.

Mr. MAUS. I ask that I be able to finish the statement. That is all I am asking, and I have that permission I believe from the chairman.

The CHAIRMAN. All right. Read it.

Mr. MAUS. The publicity already given the subpena tends to cast a veil of suspicion not only over me, but family and relatives who carry the same name, and possibly on people I consider my friends. I am not accused of, nor have I committed, any crimes. Yet I have felt compelled to hire a lawyer to protect my legal rights.

I have always paid my debts and my taxes. My record of over eighteen years of employment in U. S. Steel is free from any reprimand. I have served in the Navy, as I mentioned. I have strived to be honest and decent to all people I have known, my friends, my neighbors, my union brothers, and the men I work with on the job.

I feel that Chief Justice Warren in his Watkins report, has made a statement that puts the issue squarely, "Who can define the meaning of 'un-American'?"

Mr. Warren also states in his decision on the Watkins case, and I would just like to read one paragraph from this, and I am finished.

> Abuses of the investigative process may imperceptibly lead to abridgment of protected freedoms. The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions, or associations is a measure of governmental interference. And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous. This effect is even more harsh when it is past beliefs, expressions, or associations that are disclosed and judged by current standards rather than those contemporary with the matters exposed. Nor does the witness alone suffer the consequences. Those who are identified by witnesses and thereby placed in the same glare of publicity, are equally subject to public stigma, scorn, and obloquy.
>
> Beyond that, there is the more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time. That this impact is partly the result of nongovernmental activity by private persons cannot relieve the investigators of their responsibility for initiating the reaction.

Mr. TAVENNER. I am not certain that the witness has been directed to answer this question.

The CHAIRMAN. He was directed to answer the question.

Mr. MALIS. Would you repeat the question, please? I think I have an idea, but I am not absolutely clear.

Mr. TAVENNER. Yes. I think you better read the question to him.

(The record was read by the reporter.)

Mr. MALIS. I repeat my other answer that I refue to answer that question on the grounds that it is an invasion of my rights as guaranteed on the first amendment, freedom of association and freedom of speech. I also feel that I do not believe that you have the authority to ask that question under the powers given you by Congress, and I don't believe the question has any relationship to whatever powers you are given by Congress.

Mr. TAVENNER. May I have a direction?

The CHAIRMAN. You are directed to answer the question.

Mr. MALIS. I have the same answer that I just finished stating.

Mr. TAVENNER. Will you tell the committee, please, whether or not at this time the Communist Party is concentrating in an effort to strengthen its organization among the employees at your mill?

Mr. MALIS. I refuse to answer that question on the grounds that I have just finished stating.

Mr. TAVENNER. Are you now raising the question of the pertinency of that question to the subject of tlis inquiry?

(The witness conferred with his counsel.)

Mr. MALIS. Yes, I believe that was included in my reply.

Mr. TAVENNER. Yes. And you continue to raise that question?

Mr. MALIS. Yes; I do.

Mr. TAVENNER. The subject of this inquiry relates to the activities of the Communist Party in infiltration in labor within basic industry and the techniques and tactics used by the Communist Party in that respect. The question that I asked you about the activity of the Communist Party at this time is pertinent to that question because it is self-evident that the only way by which the committee can obtain information relating to this subject is to ask you and others as witnesses what those activities are.

Now, I think that shows the pertinency, and I ask for a direction.

The CHAIRMAN. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. MALIS. I still do not understand the meaning of pertinency, but I decline to answer the question for the same reasons given.

Mr. TAVENNER. I have no further questions, Mr. Chairman.

The CHAIRMAN. All right. The witness is excused.

Do you have one more witness?

Mr. TAVENNER. Yes, sir.

The CHAIRMAN. Will you raise your right hand? Do you solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MALIS. I do.

TESTIMONY OF WALTER MALIS, ACCOMPANIED BY COUNSEL, IRVING MEYERS

Mr. TAVENNER. You are Mr. Walter Malis?

Mr. MALIS. Right.

Mr. TAVENNER. It is noted that you are accompanied by the same counsel who represented the former witness.

Mr. MEYERS. My name is Irving Meyers, Chicago, Ill.

And at this time I wish to protest the presence of two persons here, not members of the committee, who Congressman Walter identified as employed by the Department of Justice.

Mr. TAVENNER. When and where were you born, Mr. Malis?

Mr. MALIS. I was born on June 27, 1911 in Springfield, Ill.

Mr. TAVENNER. Where do you now reside?

Mr. MALIS. Address is 9155 Carolina Place.

Mr. TAVENNER. In Gary?

Mr. MALIS. The mailing address is Crown Point, Ind.

Mr. TAVENNER. How long have you lived in Gary or Lake County, Ind.?

Mr. MALIS. I have lived here 45 years.

Mr. TAVENNER. How are you employed?

Mr. MALIS. At the U. S. Steel in Gary.

Mr. TAVENNER. At what plant?

Mr. MALIS. Gary Works.

Mr. TAVENNER. Is that known as the Big Mill?

Mr. MALIS. Yes, sir.

Mr. TAVENNER. How long have you been employed there?

Mr. MALIS. Twenty-one years.

Mr. TAVENNER. Mr. Malis, the committee is undertaking to obtain evidence relating to the techniques and tactics of the Communist Party in its infiltration into the steel plants and also the extent, character, and objects of Communist Party propaganda activities within those plants. The committee is interested to know from you just what activities the Communist Party is engaged in in your plant now, that is, the plant where you work.

(The witness conferred with his counsel.)

Mr. MALIS. Are you asking me a question?

Mr. TAVENNER. Yes, that was a question.

Mr. MALIS. I don't understand the question. Will you state it again?

Mr. TAVENNER. I say the committee is interested to know and therefore I ask you the question: What type of Communist Party activities are being engaged in at this time in the plant where you work?

(The witness conferred with his counsel.)

Mr. MALIS. At this time I will refuse to answer this question using my right under the first amendment not to answer. My associations are my own. Also, I don't feel that this committee has the right to ask of me this question.

Mr. TAVENNER. Why do you feel the committee hasn't ——

The CHAIRMAN. Just a minute. You are directed to answer the question.

(The witness conferred with his counsel.)

Mr. MALIS. Well, I decline to answer on the basis of the Watkins decision as explained to me by my attorney.

(The witness conferred with his counsel.)

Mr. MALIS. Also on the other ground, the first amendment.

Mr. TAVENNER. After that statement, I would like again to ask that the witness be directed to answer the question.

The CHAIRMAN. You are directed to answer the question.

Mr. MALIS. It is the same answer.

Mr. TAVENNER. Are you a member, and an active member in the Communist Party at this time?

(The witness conferred with his counsel.)

Mr. MALIS. I decline to answer for the same reasons.

Mr. SCHERER. I ask that you direct the witness to answer that question.

The CHAIRMAN. You are directed to answer that question.

Mr. MALIS. I decline for the same reason.

Mr. TAVENNER. I have no further questions.

The CHAIRMAN. The committee will stand in recess.

(Whereupon, at 3:15 p. m., Tuesday, February 11, 1957, the committee recessed, subject to the call of the Chair.)

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[fol. 515] DEFENDANT'S EXHIBIT 1

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

Ralph R. Roberts,
Clerk.

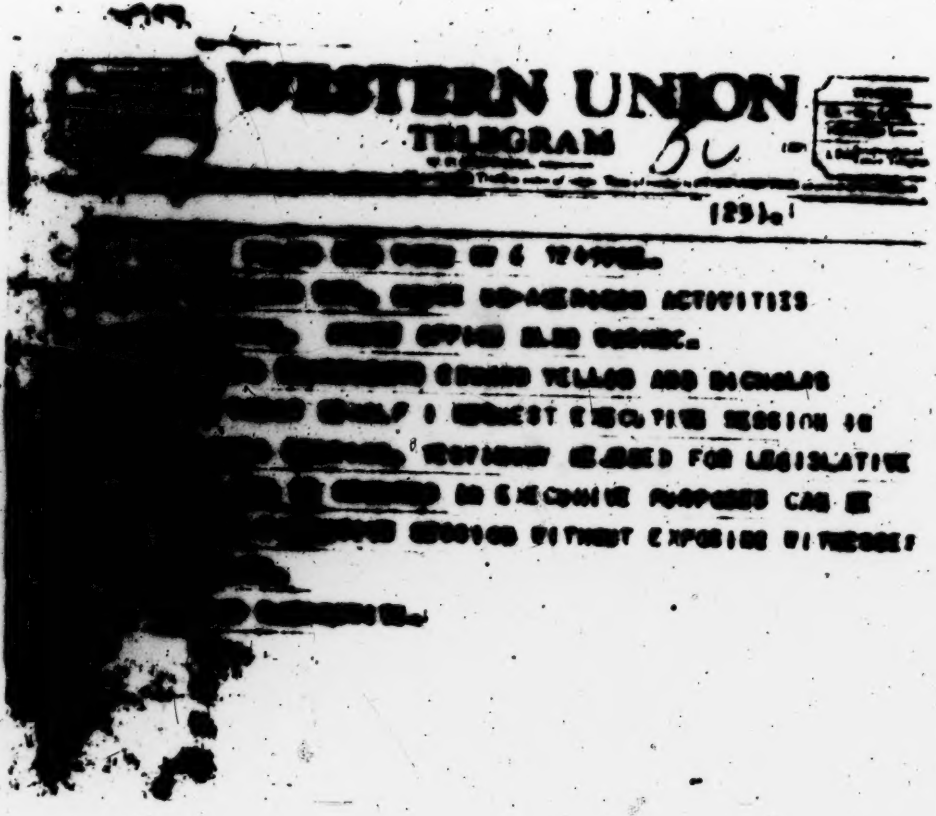
Office of the Clerk
House of Representatives
Washington, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is an authentic photostatic copy of a telegram directed to Frank Tavenner, Esq., House Un-American Activities Committee, House Office Building, Washington, D. C., the original of which is part of the files of the House of Representatives under my custody.

In witness whereof I hereunto affix my name and the seal of the House of Representatives, in the city of Washington, District of Columbia, this fourth day of March, anno Domini one thousand nine hundred and sixty.

Ralph R. Roberts, Clerk of the House of Representatives. (Seal)

[fol. 516]



[fol. 517] DEFENDANT'S EXHIBIT 2

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

Ralph R. Roberts,
Clerk.

Office of the Clerk
House of Representatives
Washington, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is an authentic photostatic copy of a telegram directed to Victor Rabinowitz, 25 Broad Street, New York, and signed by Richard Arens, Staff Director, the original of which is part of the files of the House of Representatives under my custody.

In witness whereof, I hereunto affix my name and the seal of the House of Representatives, in the city of Washington, District of Columbia, this fourth day of March, anno Domini one thousand nine hundred and sixty.

Ralph R. Roberts, Clerk of the House of Representatives. (Seal.)

[fol. 518]

WESTERN UNION

TELEGRAM

W. P. MARSHALL, President

STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

-J38 (26).

W BUA068 GOVT PD=BU WASHINGTON DC 6 224PM EST FEB 6 PM 2 38

VICTOR RABINOWITZ=

25 BROAD ST NYK=

REURTEL REQUESTING EXECUTIVE SESSION IN LIEU OF OPEN SESSION FOR EDWARD YELLIN AND NICHOLAS BUSIC. YOUR REQUEST DENIED=

RICHARD ARENS STAFF DIRECTOR=

THE COMPANY WILL [illegible]

[fol. 519] DEFENDANT'S EXHIBIT 3

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

RULES OF PROCEDURE

Committee on Un-American Activities

U. S. House of Representatives, Washington, D. C.

[fol. 520] Printed July 15, 1953

[fol. 521] Committee on Un-American Activities

United States House of Representatives

Harold H. Velde, Illinois, Chairman

Bernard W. Kearney, New York
Donald L. Jackson, California
Kit Clardy, Michigan
Gordon H. Scherer, Ohio
Francis E. Walter, Pennsylvania
Morgan M. Moulder, Missouri
Clyde Doyle, California
James B. Frazier, Jr., Tennessee

Robert L. Kunzig, Counsel
Frank S. Tavenner, Jr., Counsel
Louis J. Russell, Chief Investigator
Thomas W. Beale, Sr., Chief Clerk
Raphael I. Nixon, Director of Research

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[fol. 523] Public Law 601, 79th Congress

The legislation under which the House Committee on Un-American Activities operates is Public Law 601, 79th Congress [1946], chapter 753, 2d session, which provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * *

Part 2—Rules of the House of Representatives

Rule X

Sec. 121. Standing Committees

* * * * * * * * *

17. Committee on Un-American Activities, to consist of nine members.

Rule XI

Powers and Duties of Committees

* * * * * * *

(q) (1) Committee on Un-American Activities.

(A) Un-American Activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee

thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

[fol. 524] Rules Adopted by the 83d Congress

House Resolution 5, January 3, 1953

. . . . . .

Rule X

Standing Committees

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees:

. . . . . .

(q) Committee on Un-American Activities, to consist of nine Members.

. . . . . .

Rule XI

Powers and Duties of Committees

. . . . . .

17. Committee on Un-American Activities.

(a) Un-American Activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is insti-

gated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

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* * * * * * *

[fol. 525] 25 (a). The rules of the House are hereby made the rules of its standing committees so far as applicable * * *. (Rules and Manual, House of Representatives, 83d Cong., Sec. 735.)

> "A committee may adopt rules under which it will exercise its functions (I, 707; III, 1841, 1842; VIII, 2214) and may appoint subcommittees (VI, 532) which should include majority and minority representation (IV, 4551) and confer on them powers delegated to the committee itself (VI, 532) * * *."

[fol. 526] Rules of Procedure

I—Initiation of Investigations:

No major investigation shall be initiated without approval of a majority of the Committee. Preliminary inquiries, however, may be initiated by the Committee's staff with the approval of the Chairman of the Committee.

II—Subjects of Investigation:

The subject of any investigation in connection with which witnesses are summoned or shall otherwise appear shall be announced in an opening statement to the Committee before the commencement of any hearings; and the information sought to be elicited at the hearings shall be relevant and germane to the subject as so stated.

III—Subpenaing of Witnesses:

A—Subpenas shall be signed and issued by the Chairman of the Committee, or any member of the Committee designated by said Chairman.

[fol. 527] B—Witnesses shall be subpenaed at a reasonably sufficient time in advance of any hearing, said time to be determined by the Committee, in order to give the witness an opportunity to prepare for the hearing and to employ counsel, should he so desire.

IV—Executive and Public Hearings:

A—*Executive:*

(1) If a majority of the Committee or Subcommittee, duly appointed as provided by the rules of the House of Representatives, believes that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation, or the reputation of other individuals, the Committee shall interrogate such witness in an Executive Session for the purpose of determining the necessity or advisability of conducting such interrogation thereafter in a public hearing.

(2) Attendance at Executive Sessions shall be limited to Members of the Committee, its staff, and other persons whose presence is requested, or consented to by the Committee.

(3) All testimony taken in Executive Sessions shall be kept secret and shall not be released or used in public sessions without the approval of a majority of the Committee.

B—*Public Hearings:*

(1) All other hearings shall be public.

[fol. 528] V—Testimony Under Oath:

All witnesses at public or executive hearings who testify as to matters of fact shall give all testimony under oath or affirmation. Only the Chairman or a member of the Committee shall be empowered to administer said oath or affirmation.

VI—Transcript of Testimony:

A complete and accurate record shall be kept of all testimony and proceedings at hearings, both in public and in Executive Session.

Any witness or his counsel, at the expense of the witness, may obtain a transcript of any public testimony of the witness from the Clerk of the Committee.

Any witness or his counsel may also obtain a transcript of any executive testimony of the witness:

(1) When a special release of said testimony prior to public release is authorized by the Chairman of the Committee or the Chairman of any Subcommittee; or

(2) After said testimony has been made public by the Committee.

VII—Advice of Counsel:

A—At every hearing, public or executive, every witness shall be accorded the privilege of having counsel of his own choosing.

B—The participation of counsel during the course of [fol. 529] any hearing and while the witness is testifying shall be limited to advising said witness as to his legal rights. Counsel shall not be permitted to engage in oral argument with the Committee, but shall confine his activity to the area of legal advice to his client.

VIII—Conduct of Counsel:

Counsel for a witness shall conduct himself in a professional, ethical, and proper manner. His failure to do so shall, upon a finding to that effect by a majority of the Committee or Subcommittee before which the witness is appearing, subject such counsel to disciplinary action which

may include warning, censure, removing from the hearing room of counsel, or a recommendation of contempt proceedings.[1]

In case of such removal of counsel, the witness shall have a reasonable time to obtain other counsel, said time to be determined by the Committee. Should the witness deliberately or capriciously fail or refuse to obtain the services of other counsel within such reasonable time, the hearing shall continue and the testimony of such witness shall be heard without benefit of counsel.

[fol. 530] 4X—Statement by Witness:

A—Any witness desiring to make a prepared or written statement[2] for the record of the proceedings in executive or public sessions shall file a copy of such statement with the counsel of the Committee within a reasonable period of time in advance of the hearing at which the statement is to be presented.

B—All such statements so received which are relevant and germane to the subject of the investigation may, upon approval, at the conclusion of the testimony of the witness, by a majority vote of the Committee or Subcommittee members present, be inserted in the Official transcript of the proceedings.

X—Rights of Persons Affected by a Hearing:

A—Where practicable, any person named in a public hearing before the Committee or any Subcommittee as subversive, Fascist, Communist, or affiliated with one or more subversive-front organization, who has not been previously so named, shall, within a reasonable time

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[1] The Committee seeks factual testimony within the personal knowledge of the witness and such testimony and answers must be given by the witness himself and not suggested to witness by counsel.

[2] Statements which take the form of personal attacks by the witness upon the motives of the Committee, the personal characters of any Members of the Congress or of the Committee staff, and statements clearly in the nature of

thereafter, be notified by registered letter, to the address last known to the Committee, of such fact, including:

[fol. 531] (1) A statement that he has been so named,

(2) The date and place of said hearing,

(3) The name of the person who so testified,

(4) The name of the subversive, Fascist, Communist, or front organization with which he has been identified, and

(5) A copy of the printed Rules of Procedure of the Committee.

B—Any person, so noted, who believes that his character or reputation has been adversely affected or to whom has been imputed subversive activity, may within 15 days after receipt of said notice:

(1) Communicate with the counsel of the Committee,[3] and or

(2) Request to appear at his own expense in person before the Committee or any Subcommittee thereof in public session and give testimony, in denial or affirmation, relevant and germane to the subject of the investigation.

C—Any such person testifying under the provisions of B (2) above shall be accorded the same privileges as any other witness appearing before the Committee, and may be questioned concerning any matter relevant and germane to the subject of the investigation.

[fol. 532] XI—Admissibility of Testimony:

A witness shall be limited to giving information relevant and germane to the subject under investigation. The Committee shall rule upon the admissibility of all testimony or information presented by the witness.[4]

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[3] All witnesses are invited at any time to confer with Committee counsel or investigators for the Committee prior to hearings.

[4] The House Committee on Un-American Activities is a Congressional Committee, not a court (see pp. IV and

XII—Relationship of Husband and Wife:

The confidential relationship between husband and wife shall be respected, and for reasons of public policy, one spouse shall not be questioned concerning the activities of the other, except when a majority of the Committee or Subcommittee shall determine otherwise.

XIII—Televised Hearings:

A—If a hearing be televised:

(1) Television facilities in the hearing room shall be restricted to two cameras, the minimum lighting facilities practicable, and the television production shall be available on a pool basis to all established television companies desiring participation.

[fol. 533] (2) Telecasts of Committee hearings shall be on the basis of a public service only, and this fact shall be publicly announced on television in the beginning and at the close of each telecast. No commercial announcements shall be permitted from the hearing room or in connection therewith, and no actual or intimated sponsorship of the hearings shall be permitted in any instance.

B—Upon the request of a witness that no telecast be made of him during the course of his testimony, the Chairman shall direct that television cameras refrain

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V). Moreover, the Committee has neither the authority nor the vast powers of a court of law.

A Congressional Committee conducts a search for information, not a trial.

The requirements of time, the nature of the fact-finding hearing, the complications of travel, the realities of expense, and the voluminous duties of Members of Congress all add together to make it impractical for courtroom procedure to be followed.

The Committee has given frequent and diligent consideration to this subject, and has determined that in order to carry out its responsibilities imposed by law, the rules of evidence, including cross-examination, are not applicable.

from photographing the witness during the taking of his testimony.

XIV—Committee Reports:

A—No Committee reports or publications shall be made or released to the public without the approval of the majority of the Committee.

B—No summary of any Committee report or publication and no statement of the contents of such report or publication shall be released by any Member of the Committee or its staff, prior to the official issuance of the report.

XV—Witness Fees and Travel Allowance:

Each witness who has been subpenaed upon the completion of his testimony before the Committee, may report [fol. 534] to the office of the Clerk of the Committee, room 227, Old House Office Building, Washington, D. C., and there sign appropriate vouchers for travel allowances and attendance fees upon the Committee. If hearings are held in cities other than Washington, D. C., the witness may contact the Clerk of the Committee, or his representative, prior to leaving the hearing room.

XVI—Contempt of Congress:

No recommendation that a witness be cited for contempt of Congress shall be forwarded to the House of Representatives unless and until the Committee has, upon notice to all its members, met and considered the alleged contempt, and by a majority of those present voted that such recommendation be made.

XVII—Distribution of Rules:

All witnesses appearing before the House Committee on Un-American Activities shall be furnished a printed copy of the Rules of Procedure of the Committee.

[fol. 535] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1960

No. —

EDWARD YELLIN, Petitioner,

v.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—April 21, 1961

Upon Consideration of the application of counsel for petitioner,

It is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 2, 1961.

Tom Clark, Associate Justice of the Supreme Court of the United States.

Dated this 21st day of April, 1961.

[fol. 536] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1961

No. 154 Misc.

EDWARD YELLIN, Petitioner,

vs.

UNITED STATES

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—October 9, 1961

On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 477.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE 1961 621709 681

SUPPLEMENTAL TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 35

EDWARD YELLIN, PETITIONER

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 31, 1962
CERTIORARI GRANTED OCTOBER 8, 1962

Supreme Court of the United States

OCTOBER TERM, 1962

No. 35

EDWARD YELLIN, PETITIONER

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 300]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1960—JANUARY SESSION, 1961

No. 13097

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

EDWARD YELLIN, DEFENDANT-APPELLANT

Appeal from the United States District Court
for the Northern District of Indiana,
Hammond Division

OPINION—February 16, 1961

Before SCHNACKENBERG, KNOCH and CASTLE, *Circuit Judges.*

KNOCH, *Circuit Judge.* Defendant was indicted in five counts for the offense of contempt of Congress, in violation of Title 2, U. S. C., § 192,[1] in willfully refusing to answer questions pertinent to the subject then under inquiry[2] by the House of Representatives' Committee on

[1] "Every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

[2] As stated in the indictment, the subject under inquiry was: ". . . to-wit: The extent, character, and objects of Communist infiltration and Communist Party propaganda activities in basic industry in the Gary, Indiana, area, and the execution by administrative agencies concerned of Public Law 637, of the 83rd Con-

[fol. 301] Un-American activities. Each count alleged refusal to answer a single question. The fifth count was dismissed on motion of the government. Counts I to IV inclusive, listed the following questions:

"I. Mr. Yellin, where did you reside prior to September 1957?

II. Will you tell the committee, please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1957?

III. Were you a member of the Communist Party on the 23d of June, 1949, which is the date of application filed in your name for employment in Gary?

IV. Will you tell the committee whether or not in 1957 there were present in any of the steel unions at Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party?"

Defendant waived jury trial. The District Court found him guilty as charged in Counts I to IV, inclusive, and imposed concurrent sentences of one year on each count, plus a fine of $250. Defendant took this appeal.

Defendant argues that he was subpoenaed to testify in February, 1958, a few months after the United States Supreme Court had decided *Watkins* v. *United States*, 354 U.S. 178 (June, 1957), and that, relying on *Watkins*, he believed that he was not required to answer the questions put to him. Therefore, he contends that he cannot be said to have had the requisite criminal intent to support conviction. He further contends that:

> "Rule XI of the House Rules, which defines the jurisdiction of the House Committee on Un-American activities, is so unclear on its face that it cannot support a criminal charge."

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gress known as the Communist Control Act of 1954, relating to the eligibility to exercise the rights and privileges provided under the National Labor Relations Act of labor organizations determined by the Subversive Activities Control Board to be Communist-infiltrated organizations."

The pertinent portions of the Rule read:

"17. Committee on Un-American Activities. * * *

"(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make [fol. 392] from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

"For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member. * * *

"26. To assist the House in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such

committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government."

On January 15, 1958, the Committee had adopted a resolution to hold hearings in Gary, Indiana. Under [fol. 303] authority of an earlier resolution, January 22, 1957, Chairman Francis E. Walter designated a three-man subcommittee, with himself as its Chairman, to conduct hearings in Gary on February 10 and 11, 1958.

Defendant makes a point of the fact that the U. S. Supreme Court did not decide *Barenblatt* v. *United States*, 360 U. S. 109 (1959) until after his refusal to answer the subcommittee's questions. In *Barenblatt*, the Supreme Court had held that the House Committee on Un-American Activities and its subcommittees were authorized by compulsory process to investigate Communist activities in this country, and that the record there, (as in the case before us) refuted the contention that the defendant was not adequately apprised of the pertinency of the subcommittee's questions to the subject matter of the inquiry. We do not agree with defendant that *Barenblatt* modified the earlier holding in *Watkins*. The facts differed. In distinguishing *Watkins*, the Supreme Court states in *Barenblatt*, at page 123:

> "[A]nd the questions asked the petitioner were not only amorphous on their face, but in some instances clearly foreign to the alleged subject matter of the investigation— . . ."

Defendant quotes from *Barenblatt*, at page 126, that:

> "Where First Amendment rights are asserted to bar governmental interrogation, resolution of the 'issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown."

Defendant argues that he was, therefore, entitled to introduce testimony relating to such balance of interests in the circumstances shown here. Defendant called Professor Thomas I. Emerson, Professor of Law at Yale Uni-

versity, to testify as an expert on the issue of balancing the public and private interests in this case. The District Court sustained the government's objection that this constituted opinion evidence on matters of law and invaded the province of the Court. Aside from the rejected testimony, defendant argues that there was little value to the testimony sought to be elicited from him; that it was solely cumulative in nature, the subcommittee having taken much [fol. 304] evidence on this subject in other areas; and that it was insufficient to outbalance the defendant's substantial rights under the First Amendment to the Constitution.

Rule IV-A (1) of the Committee's Rules of Procedure provides:

> "If a majority of the Committee or Subcommittee, duly appointed as provided by the rules of the House of Representatives, believes that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation, or the reputation of other individuals, the Committee shall interrogate such witness in an Executive Session for the purpose of determining the necessity or advisability of conducting such interrogation thereafter in a public hearing."

Defendant's counsel, under date of February 6, 1958, had sent a telegram to Frank Tavenner, the Committee's counsel, at Washington, D.C., requesting:

> "[E]xecutive session in lieu of open session, testimony needed for legislative purposes . . . can be secured in executive session without exposing witnesses to publicity."

Mr. Tavenner testified in the District Court that he was no longer in Washington when the telegram arrived, having already left for Gary. The Staff Director, Richard Arens, on February 6, 1958, sent defendant's counsel an answering telegram advising him that his request was denied. The Chairman, Congressman Walter, at the hearing on February 10, 1958, refused to allow defendant's counsel to read the two telegrams into the record, al-

though he did state that their inclusion in the record would be considered in executive session. Both telegrams are a part of the record before us. Defendant characterizes these actions of the Committee as a failure to adhere to its own rules, which excused defendant's refusal to answer questions in public session.

Defendant further contends that the questions set out in Counts II and IV are too vague to support an indictment, and that the Committee has in fact no genuine legislative purpose.

[fol. 305] Defendant sees the contested issues as:

"1. Was appellant guilty of a willful violation of 2 U.S.C. 192?

2. Did the District Court err in refusing to admit the proferred testimony of Professor Thomas I. Emerson?

3. On this record, does the public interest in securing answers to the questions put to appellant outweigh his interest in protecting his rights under the First Amendment?

4. Did the Committee violate its own rules in refusing to grant or to consider appellant's request for an executive session?

5. Were the questions contained in Counts 2 and 4 too vague to support a criminal indictment?

6. Does the House Committee on Un-American Activities have a genuine legislative purpose?"

The record shows that at the opening of the proceedings in Gary, on February 10, 1958, the Chairman, Congressman Walter, stated the purpose of the hearing, as set out in the resolution of January 15, 1958, to inquire into:

> "1. The extent, character and objects of Communist infiltration and Communist Party propaganda activities in basic industry in the Gary, Indiana area, the legislative purpose being to obtain additional information for use by the Committee in its consideration of Section 16 of H.R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly

and willfully becoming or remaining a member of the Communist Party with knowledge of the purpose or objective thereof, and for the additional legislative purpose of adding to the Committee's overall knowledge on the subject, so that Congress may be kept informed and thus prepared to enact remedial legislation in the national defense and for internal security, when and if the exigencies of the situation require it.

[fol. 306] "2. Execution by administrative agencies concerned of Public Law 637 of the 83d Congress known as the 'Communist Control Act of 1954', relating to the eligibility to exercise the rights and privileges provided under the National Labor Relations Act of labor organizations determined by the Subversive Activities Control Board to be Communist-infiltrated organizations. The legislative purpose is to assist Congress in appraising the administration of the Communist Control Act of 1954, and to enact such amendments thereto as the exigencies of the situation require."

The Chairman then explained, in detail, about the Omnibus Security Bill, H.R. 9352, a comprehensive effort to deal with all problems in the field of internal security, and the hope of the Committee that factual information obtained at this hearing would be of assistance in consideration of the numerous provisions of that Bill. He explained further that information was particularly sought for use in connection with the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and willingly becoming or remaining a member of the Communist Party with knowledge of its purpose or objective; thus clearly setting out a genuine legislative purpose. Defendant at the hearing February 10, 1958, testified that he had heard this statement by the Chairman, and that he heard the testimony of John Lautner, the witness who preceded the defendant at the February 10th hearing. Mr. Lautner had testified that he was a high functionary in the Communist Party from 1930 to 1950. He described a policy of colonization in basic industries to penetrate trade unions, whereby colonizers, who were frequently undergraduate college students, would misrepresent their identity, background and educa-

tion, in order to operate in various different areas under differing aliases.

When defendant refused to answer the question: "Where did you reside prior to September 1957?" stating his reliance on *Watkins*, Mr. Tavenner explained further that it would be impossible for the Committee to learn anything from defendant regarding Communist Party activities in the Gary area, without first ascertaining whether defendant had been in the area for a period of time. Having explained the basis for the question, Mr. Tavenner then asked the Chairman to direct defendant to answer. Defendant again refused to answer.

[fol. 307] Evidence was introduced regarding defendant's college education and an application for employment made in defendant's name, which not only failed to set out the college education (in possible conformity to the policy outlined by Mr. Lautner) but which stated that the defendant had been employed at certain automobile establishments during the very periods that other records showed him to have been attending the University of Michigan. Defendant refused to answer any questions pertaining to his application for employment, his education, or his background. Mr. Tavenner explained, again in vain, about the practice of the Communist Party in colonizing industry, and the Committee's need to understand the full tactics of operations in Gary, which constituted the reason for the questions.

In his testimony at the trial, Mr. Tavenner testified that it was the practice of the Committee to interview witnesses, prior to subpoena, to determine whether they had information of value. He testified further that the Committee already had evidence which led them to believe that the defendant had been a member of the Communist Party at the University of Michigan, that he had been transferred there from New York City, and then to Gary to secure employment in the steel plants, and that he had been engaged in Communist Party activity while so employed. On the basis of this information, the Committee was already satisfied, without prior interview, that defendant could, if willing, supply the Committee a great deal of data regarding infiltration of the steel industry and plans for colonization there in the Gary area.

Defendant's reliance on *Watkins* is misplaced. Watkins' testimony was characterized in the government's brief in that case as:

> "A more complete and candid statement of his past political associations and activities (treating the Communist Party for present purposes as a mere political party) can hardly be imagined."

He agreed to answer any questions about himself, but he believed questions about other persons who had removed themselves from the Communist movement to be irrelevant to the work of the Committee. The Supreme Court in *Watkins* said, at page 209:

[fol. 308] "There are several sources than can outline the 'question under inquiry' in such a way that the rules against vagueness are satisfied. The authorizing resolution, the remarks of the chairman or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic clear."

Unlike those in the *Watkins* case, the proceedings here clearly indicated through detailed, explanatory statements and prior testimony, the precise nature of the inquiry and the pertinency of the questions which defendant was asked.

Defendant's mistaken reliance on *Watkins* as a basis for refusal to testify does not rob that refusal of willfulness. His refusal was deliberate. The fact that he thought he had a right to refuse made his deliberate refusal no less willful. In *Sinclair v. United States*, 279 U. S. 263, 299 (1929) the fact that the accused acted in good faith on advice of competent counsel in refusing to answer a question was held not to be a defense.

The proffered expert testimony of Professor Emerson on the issue of the balance between public and private interests in this case is a part of the record before us. We have carefully read Professor Emerson's statement of the elements to be considered and the weight he assigned to each. He concluded that the interest of the government in obtaining answers from the defendant was outweighed by the defendant's interest in freedom of

speech or silence and by the community's interest in maintaining freedom of political expression.

We are compelled to agree with the District Judge who stated:

> "[I]t seems to me that expert testimony of this kind is not material in that it is not a question of fact as to what elements go to make up the balance of interests, public and private, but a legal matter, which is within the province of the Court to decide; and it is not a subject of expert testimony."

In oral argument, defendant's counsel conceded that the questions put to defendant had a logical relationship to the subject under inquiry and were pertinent in that sense. [fol. 309] He argued, however, that as mere cumulative evidence, the testimony sought from defendant had only miniscule pertinence, when balanced against defendant's private right of silence. We cannot agree. On the record before us, there was substantial basis for the District Court's conclusion that the balance here was in favor of the public interest.

Apart from the fact that the defendant has nowhere shown a danger to national security, or unjust injury to his reputation or that of others, in a public interrogation, our reading of Rule IV-A leads us to conclude that it confers no rights on the witness. If a majority of the Committee or subcommittee believe public interrogation of a witness might endanger national security or unjustly injure his reputation, or the reputation of others, then such witness shall be interrogated in executive session to determine the advisability of subsequent public interrogation. No provision is made for the witness to compel the Committee to poll its members on this question with respect to any specific witness.

With respect to Counts II and IV, defendant contends that the issue is not whether he understood the meaning of the questions, but whether the terminology is so vague that it fails to meet the requirements of the Sixth Amendment or of Rule 7(c) of the Federal Rules of Criminal Procedure.

As the sentences imposed here are to run concurrently, it is sufficient to support the judgment of the Court below if conviction on any count is affirmed. However, we have studied these two counts and conclude that they do meet the test.

All other arguments put forth by the defendant have been considered with care and found to be lacking in merit.

The judgment of the District Court is AFFIRMED.

• • • •

[fol. 310]

IN UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

* * *

Before

Hon. ELMER J. SCHNACKENBERG, *Circuit Judge*
Hon. WIN G. KNOCH, *Circuit Judge*
Hon. LATHAM CASTLE, *Circuit Judge*

No. 13097

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

EDWARD YELLIN, DEFENDANT-APPELLANT

Appeal from the United States District Court
for the Northern District of Indiana,
Hammond Division

JUDGMENT—February 16, 1961

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Indiana, Hammond Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

[fol. 311] [File endorsement omitted]

[fol. 312]

IN UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Cause No. 13097

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

EDWARD YELLIN, DEFENDANT-APPELLANT

PETITION FOR REHEARING—Filed March 3, 1961

Pursuant to Rule 25 of the Rules of this Court, appellant hereby petitions for a rehearing of the decision of this Court affirming the conviction of appellant by the District Court for the Northern District of Indiana on an indictment charging a contempt of Congress in violation of 2 U. S. C. § 192.

Rehearing is sought for the following reasons:

1. In holding that Rule IV A(1) of the Rules of Procedure of the House Committee on Un-American Activities confers no rights on a witness, this Court overlooked the testimony of committee counsel to the contrary.

2. In holding the testimony of Professor Emerson inadmissible on the issue of the balance between private and public interests, this Court misunderstood appellant's argument and overlooked the language of the Supreme Court in the *Barenblatt* case.

[fol. 313] 3. In holding that the Committee had a genuine legislative purpose, this Court overlooked the evidence to the contrary and relied instead on the Committee's self-serving statement as to its purpose.

4. The Court overlooked appellant's argument that § 192 as here applied was unconstitutionally vague, its meaning being ascertainable only through an examination of its legislative history.

POINT I

RULE IV-A(1) OF THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES CONFERS RIGHTS ON THE WITNESS

Frank S. Tavenner, Jr., counsel to the House Committee, testified at the trial for the Government. On

cross-examination, he was questioned as to the applicability of Rule XI(m) of the Rules of the House of Representatives and Rule IV-A of the Rules of the Committee. He testified that the former rule was not intended to protect witnesses; however, as to Rule IV-A, he testified as follows:

> "Q. . . . Are you familiar with that rule?
>
> A. Quite familiar with it.
>
> Q. And does that rule operate ever for the protection of a witness who is called?
>
> A. Certainly.
>
> Q. Did the Committee consider at all the applicability of that rule to the request I made on behalf of Mr. Yellin?
>
> A. It was not discussed with the Committee." (S.M. 94, 95).

[fol. 314] Indeed, the rule itself on its face provides protection for the witness for it refers to "interrogation of a witness in a public hearing [which] might . . . unjustly injure his reputation." Furthermore, the background out of which the rule arose would make it doubly clear that it was intended for the protection of the witness. The record of public outcry against the arbitrary conduct of this Committee is too lengthy to set forth here. Much of the written material on the subject, at least up to 1953, can be found in the Hearings before the Subcommittee on Legislative Procedure of the House Committee on Rules, 83rd Cong., 2nd Sess., where extensive testimony was taken in an effort to reform the rules of the House and of its committees and to provide adequate protection for witnesses. Indeed, it was in response to this criticism that these rules were adopted in the first place.

Reading the rules in this framework, it must have been clear to the Committee that the public interrogation of appellant might well have resulted in injury to his reputation. He was to be called upon to admit or deny his membership in the Communist Party and such inquiry almost always results in injury. In any event, under the rules intended for his protection, he was entitled, at the

very least, to have his request considered by the Committee. This was not done.

[fol. 315] POINT II

THE TESTIMONY OF PROFESSOR EMERSON SHOULD HAVE BEEN ADMITTED

This Court quotes with approval the language of the District Court that "It is not a question of fact as to what elements go to make up the balance of interests, public and private, but a legal matter, which is within the province of the Court to decide" (Slip Opinion, p. 9). This seems to be not only at variance with the language of the Supreme Court in *Barenblatt* v. *United States*, 360 U. S. 109, but at variance with the requirements of the Constitution as well.

In the *Barenblatt* case, the Court spoke of balancing "the competing private and public interests at stake *in the particular circumstances shown*" (360 U. S. at 125; emphasis supplied). The particular circumstances obviously relate to facts, not to matters of law. Indeed, serious consideration of the issues before the Court in this regard will make it clear that any other holding would be at variance with the Constitution. The Court is here being called upon to determine whether a man is guilty of a criminal offense. In this setting, the United States Supreme Court has held that the Committee's right to require an answer to a question depends on a balancing of public and private interests in each case. Obviously the Court could not have intended in the Barenblatt case to hold that, forever and ever, under all possible circum-[fol. 316] stances, the Committee had the right to ask the questions before the Court in the *Yellin* case.

Whether the Committee had such right will depend on the facts of each case and it was for the purpose of supplying such facts that the testimony of Professor Emerson was admissible. We do not know how else a Court can determine factual matters except by the presentation of evidence.

Furthermore, the Court failed to consider the whole of appellant's argument. It is not only the rejected testimony offered by Professor Emerson which provides a

defense for appellant. Even without his testimony we respectfully urge that on this record the balance between competing public and private interests would bar the questions which are the subject of this indictment.

We shall not attempt to discuss our argument in full at this point; we respectfully refer the Court to Point IV of appellant's brief, at pages 29 to 32.

Point III

The Statute as Here Applied Required Examination of Extensive Legislative History to Ascertain Its Meanings to Convict Appellant on Such a Statute Is a Violation of the Fifth Amendment

The resolution under which the Committee was investigating gave the Committee the right to investigate "Un-American propaganda activities." The instant investiga- [fol. 317] tion was not so limited. It actually made inquiry into Communist activities in general and, at first blush, it would thus seem that the Committee had exceeded its authority (*cf. United States* v. *Rumely*, 345 U. S. 41).

In the *Barenblatt* case, however, the Supreme Court held that the legislative history of the resolution justified a reading of the phrase "Un-American propaganda activities" to mean the much broader field of Communist Party activities of any description. This conclusion was reached only after extensive examination into the legislative history of the statute, set forth in much detail at pages 118 through 123 of the *Barenblatt* opinion.

It would seem to us elementary that a criminal statute must be clear on its face and that legislative history may not be summoned to the assistance of the prosecution to clarify or (as in the instant case) to expand its meaning. To hold otherwise would be to require every person called before a committee to engage in legislative research so that he might reach an estimate as to what the Legislature meant to say instead of relying on what it actually said. Such an application of law is a violation of the Due Process Clause of the Fifth Amendment. *Winters* v. *New York*, 333 U.S. 507.

Point IV

The Committee Has No Genuine Legislative Purpose

In the brief submitted by the appellant, extensive ma-
[fol. 318] terial was set forth in support of appellant's contention that this Committee has no genuine legislative purpose. This view is not held solely by appellant. See, for example, editorial in the New York Herald Tribune, February 23, 1961; speech by Congressman James Roosevelt in the House of Representatives on April 25, 1960; "The Congressional Pillory", by Frank J. Donner, The Nation, Feb. 18, 1961.

This Court answered appellant's contention by reference to the Committee's self-serving statement that it did have a legislative purpose. The Committee always claims to have a legislative purpose; the publicly recorded facts, however, proclaim the contrary. In the past ten years the Committee has had only a handful of bills referred to it; not one of its bills has passed the Congress since 1950. The very investigation to which we are referring (now three years in the past) did not result in legislation or even in proposed legislation. In view of this record, certainly a Court should pierce the facade of legitimacy that this Committee has erected and should appraise its purpose realistically in a case in which the liberty of appellant is at stake.

Respectfully submitted.

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March 1, 1961

[fol. 319] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 320]

IN UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

• • • •

Before

Hon. ELMER J. SCHNACKENBERG, *Circuit Judge*
Hon. WIN G. KNOCH, *Circuit Judge*
Hon. LATHAM CASTLE, *Circuit Judge*

No. 13097

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

EDWARD YELLIN, DEFENDANT-APPELLANT

Appeal from the United States District Court
for the Northern District of Indiana,
Hammond Division

ORDER DENYING PETITION FOR REHEARING—April 3, 1961

IT IS ORDERED by the Court that the petition for a rehearing of this cause be, and the same is hereby, DENIED.

[fol. 321] Clerk's Certificate to foregoing transcript omitted in printing

[fol. 322]

SUPREME COURT OF THE UNITED STATES

No. 477, October Term, 1961

EDWARD YELLIN, PETITIONER

vs.

UNITED STATES

ORDER RESTORING CASE FOR REARGUMENT—June 25, 1962

This case is restored to the calendar for reargument.

Mr. Justice Frankfurter took no part in the consideration or decision of this order.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 473

EDWARD YELLIN,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 477

EDWARD YELLIN,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

The District Court for the Northern District of Indiana rendered no opinion. The opinion of the Court of Appeals is reported at 287 F. 2d 292.

Jurisdiction

The judgment of the Court of Appeals was entered on February 16, 1961. A petition for certiorari was granted on October 9, 1961 (R. 299). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

Petitioner was convicted of contempt under 2 U.S.C. 192, and was fined and sentenced to one year's imprisonment for refusing to answer certain questions at a hearing of a subcommittee of the House Committee on Un-American Activities (hereinafter referred to as the Committee). The questions presented are:

1. Did the public interest in securing answers to the questions which were the subject of the indictment outweigh the petitioner's rights under the First Amendment and the public interest in the protection of the free exchange of ideas?

2. Did the trial court err in excluding the proffered expert testimony of Professor Thomas I. Emerson, offered on the issue of the balancing of public rights and private interests?

3. Did the Committee violate its Rules in refusing to question petitioner in executive session or to consider his request that he be heard in executive session?

4. Was the statute under which petitioner was convicted unconstitutionally vague?

5. Were the questions which formed the basis of counts 2 and 4 too vague to support a valid indictment?

6. In the circumstances here shown, was there any proper legislative purpose in issuing a subpoena to petitioner?

7. Was the investigation carried on by the Committee in violation of the Constitution and particularly of the First Amendment thereof?

Constitutional Provisions, Statutes and Rules Involved

The constitutional provisions involved are the First, Fifth and Sixth Amendments to the Constitution of the United States.

The statute involved is 2 U.S.C., Sec. 192, which reads as follows:

> "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

Rule XI(m) of the House of Representatives reads as follows:

> "If the Committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) receive such evidence or testimony in executive session;
>
> (2) afford such person an opportunity voluntarily to appear as a witness; and
>
> (3) receive and dispose of requests from such person to subpoena additional witnesses."

Rule IV-A of the Rules of the Committee on Un-American Activities reads as follows:

"Executive and Public Hearings

If a majority of the Committee or Subcommittee, duly appointed as provided by the rules of the House of Representatives, believes that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation, or the reputation of other individuals, the Committee shall interrogate such witness in an Executive Session for the purpose of determining the necessity or advisability of conducting such interrogation thereafter in a public hearing."

Rule XI of the Rules of the Committee on Un-American Activities reads, as far as relevant, as follows:

"RULE XI

"Power and Duties of Committees

(1) All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively * * *

Committee on Un-American Activities.

(a) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American

propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Statement

Petitioner was indicted in the Northern District of Indiana, under 2 U.S.C. Sec. 192, on five counts. One count was dismissed before trial (R. 11). Petitioner waived a jury and after trial was convicted and sentenced to one year imprisonment and a fine of $250 (R. 118).

Petitioner was subpoenaed to appear before the Committee in Gary, Indiana on February 10, 1958. On February 6, 1958, counsel for petitioner sent a telegram addressed to Frank S. Tavenner, counsel for the Committee, reading as follows:

> "Undersigned represents Edward Yellin and Nicholas Busic. On their behalf I request executive session in lieu of open session. Testimony needed for legislative purposes can be secured in executive session without exposing witnesses to publicity" (R. 37, 284a).

On the same day he received a response from Richard Arens, Staff Director of the Committee, denying the request (R. 37, 286a).

On February 10, 1958, petitioner appeared before the Committee pursuant to the subpoena. Before he was sworn, Congressman Walter, presiding, read a resolution describing the purposes of the hearings. One John Lautner was then called as a witness (Gov't Ex. 15, R. 156-172). Petitioner was called as the second witness.

At the outset, counsel for petitioner sought to introduce into the record the exchange of telegrams above referred to. The following colloquy took place:

> "Mr. Rabinowitz: Mr. Counsel, I wonder whether it would be possible to read into the record the exchange of telegrams between myself and the committee in connection with the witness's testimony. I would like to have it appear in the record.
>
> The Chairman: We will decide whether it will be made a part of the record when the executive session is held. Go ahead.
>
> Mr. Rabinowitz: Mr. Chairman, I sent the telegrams because I wanted them to appear. I do not care whether they appear publicly or not. I do want it to appear that that exchange of telegrams occurred. I did not do it just to increase the revenue of the telegram company.
>
> The Chairman: Well, whatever the reason was, whether it has been stated or otherwise, it will be considered in executive session.
>
> Mr. Rabinowitz: May I state—
>
> The Chairman: Do not bother. You know the privileges given you by this committee. You have appeared before it often enough. You know as well as anybody.
>
> Go ahead, Mr. Tavenner" (Govt. Ex. 2, R. 126).

Petitioner answered questions as to his name and address but refused to answer a series of questions as to his political activity, his educational background, his employment and his union activities. Four of these questions were made the subject of his indictment. They are:

> Count 1. Mr. Yellin, where did you reside prior to September, 1957?

Count 2. Will you tell the Committee, please, whether or not incidents came to your attention of the colonization of the steel unions by the Communist Party at any time prior to September, 1957?

Count 3. Where you a member of the Communist Party on the 23rd of June, 1949, which is the date of application filed in your name for employment in Gary?

Count 4. Will you tell the Committee whether or not in 1957 there were present in any of the steel unions at Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party? (R. 1-3)

Petitioner was never allowed to make an uninterrupted statement of the reasons for his refusal to answer. Among the reasons he gave were that the questions constituted an unconstitutional interference with his freedom of speech, belief and association; that he could not be required to answer the questions under the decisions of this Court in *Watkins* v. *United States*, 354 U. S. 178, and *Sweezy* v. *New Hampshire*, 354 U. S. 234; that the resolution creating the Committee was unconstitutionally vague; that there was no proper legislative purpose to the inquiry and that the questions asked him lacked pertinency. He did not rely on the Fifth Amendment (Govt. Ex. 2, R. 127-131).

Thereafter, petitioner was cited by the House for contempt (R. 12). He was not indicted until a few days after the Supreme Court had decided *Barenblatt* v. *United States*, 360 U. S. 109, in June 1959 (R. 1).

Petitioner came on for trial on March 6, 1960. The only witness called by the Government was Mr. Tavenner. He testified as to the alleged subject under inquiry, referring to the opening statement by Mr. Walter (R. 17).

He further testified that the Committee had previously held hearings on the same subject in Baltimore and Youngstown (R. 18). The testimony of Lautner was introduced (R. 30; Govt. Ex. 15) and Tavenner also identified a transcript of petitioner's testimony.

On cross-examination Mr. Tavenner identified the telegrams above referred to (R. 37). His attention was also called to Rule XI(m) of the House of Representatives, and Rule IV-A of the Rules of the Committee (R. 38, 43). The House Rule, he said, had been interpreted as providing protection only for persons who might be named by the witness, but he admitted that the Committee Rule IV-A (R. 43) was intended for the protection of the witness himself (R. 41, 44). He said he knew of no action taken by the Committee on the request for an executive session, and that he recalled no conference with the Chairman with respect to the request (R. 38, 44). Although the telegram had been addressed to him, it had been answered by Mr. Arens, staff director of the Committee, without his knowledge and before he even knew the telegram had been sent (R. 40). He did not know what authority Mr. Arens had to pass on such a request (R. 40), though he had been counsel for the Committee since May 1, 1949 (R. 15, 44). Mr. Tavenner wasn't sure that he had even seen the telegram sent by petitioner's counsel before the hearings began. He was, of course, at the hearing in Gary when counsel attempted to introduce the exchange of telegrams into the committee record (R. 44). That may have been the first information he had about the telegrams (R. 44).

He further stated that the normal practice of the Committee in conducting a hearing is to interview prospective witnesses "if there is any chance in the world of obtaining cooperation from them." The Committee made no effort to interview petitioner (R. 53).

While repeating that he had known of no request for an executive session before the hearing, he would not have recommended an executive session even if he had received such a request "because we knew that he was a member of the Communist Party and he was in a position to give the Committee information, if he wanted to" (R. 62).

Mr. Tavenner stated that the Committee had investigated "infiltration by the Communist Party into basic industry" in Buffalo, Flint, Colorado, New Haven, Baltimore, St. Louis, North Carolina, Youngstown and New Orleans, all prior to the hearing at which petitioner testified (R. 44-47, 50). At the time petitioner testified the Committee had sworn testimony as to most of the questions asked of petitioner, and specifically as to the questions which form the basis of Counts 1 and 3 of the indictment (R. 56-60).

The Government then rested. The petitioner called Congressman Walter, Chairman of the Committee. Mr. Walter testified that Mr. Arens had no authority to deny a request for an executive session and that the request should have been sent to him as Chairman of the Committee instead of to Mr. Tavenner as counsel. He said: "I am sure this could not have happened, had you addressed your telegram to me" (R. 69).

Mr. Walter said he did not know of the existence of the telegrams when petitioner's counsel sought to raise the question at the hearings (R. 69). He further testified as follows:

> "Q. Well, weren't you interested in finding out what I was talking about? A. I know what you were talking about. You were talking about a telegram that you say you sent, and it was too late then to raise any question that might have been raised by the telegram.
>
> Q. Why was it too late? Wasn't it possible for the Committee to hear Mr. Yellin in executive session at

that time? A. Well, the Committee already passed on the question of whether or not we would hear Mr. Yellin at a session when the purpose of calling him was discussed, and it was decided then that the rule with respect to an executive session was not applicable, because the investigator—and I might say it was Mr. Collins, a former F.B.I. agent, who developed this entire matter, and we were willing to accept his story with respect to the proposed testimony.

* * * * *

Q. Well, what conclusions did you draw from the report of Mr. Collins, which you have just related? A. We concluded that this would be a fine witness for the Committee in support of proposed legislation having to do with colonization, and, two, having to do with the protection of our defense efforts. And it is always worth a chance that somebody will testify.

Q. But it wasn't worth the chance of calling him in executive session, to see what his position would have been? A. I am sure that had you communicated this whole matter to the Committee before we left Washington, so that we could have given it due consideration—we would have, and also do—we might have a different situation today" (R. 69-70).

Although Mr. Walter said, at the hearing in Gary, that he would consider, in executive session, whether or not to put the telegrams into the record, Mr. Tavenner said he didn't know that the matter ever had been taken up, and said, "I believe I would know, if it had been" (R. 63, 71, 72). Mr. Walter said flatly that the subject had been considered in executive session, but without even reading the telegrams, (R. 72). There was no committee minute on the subject (R. 72) and the fact that petitioner had requested

an executive session hence was not called to the attention of the House when it voted to cite petitioner (Govt. Ex. 2; R. 126-142). Mr. Walter dismissed the entire matter as follows:

> "* * * I think the impression I got was that there were telegrams that were more or less in the nature of a request to postpone, without grounds, or whatever it was that Mr. Tavenner told me and the other members of the Committee; and I think that we were just not impressed by it" (R. 73).

He further stated that the only circumstances under which the Committee has executive sessions is

> "* * * where the Committee is fearful lest a witness will mention the name of somebody against whom there is no sworn testimony, and in order to prevent the name of somebody being mentioned in public that we are not sure has been active in the conspiracy" (R. 82).

Mr. Walter gave other testimony concerning the work of the Committee. He defined the expression "un-American propaganda activities" as used in Rule XI of the Rules of the House as "any activity that is inimical to the best interests of the United States" (R. 74).

Petitioner then offered certain testimony by Professor Thomas I. Emerson as an expert witness on the subject of the balancing of "the competing private and public interests at stake" in the circumstances of this case. *Barenblatt* v. *United States*, 360 U. S. 109, 126. The Court rejected the offer of proof, but it appears in full in the record at R. 93-115.

After the petitioner rested, the Court found him guilty on all four counts, sentencing him to year in jail and $250 fine (R. 116).

Aftermath

At the time Yellin testified before the Committee he was a senior in the Engineering School at the University of Colorado. He graduated with an excellent record and received a fellowship grant at the University of Illinois in mechanical engineering for the academic year 1959-1960. Upon his conviction he was suspended for twelve days by the University of Illinois but was reinstated after a hearing before a faculty committee. In March, 1961, he received a National Science Foundation Graduate Fellowship as well as a loan-grant from the Ford Foundation, without which it would have been impossible for him to continue his graduate work. At the end of June, 1961, after a petition for certiorari had been filed in this Court, one of the members of the Committee discovered the fact of the National Science Foundation grant and made a number of speeches on the subject, including some in Congress. The grant was immediately revoked. See New York Times, June 10, 1961, p. 9; June 14, 1961, p. 38; June 16, 1961, p. 13; June 17, 1961, p. 19; June 22, 1961, p. 6; June 26, 1961, p. 18; Congressional Record, June 8, 1961, p. 9123; June 21, 1961, p. 10161.

SUMMARY OF ARGUMENT

I.

In *Barenblatt* v. *United States*, this Court held that "where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown". The instant case presents questions involving the application of the "balancing" doctrine in two respects: First, the testimony which the Committee sought

to elicit from the petitioner was partly cumulative and partly merely corroborative of sworn testimony already in the possession of the Committee. Hence, the public interest in securing such trivial information could not outweigh the substantial public and private interests protected by the First Amendment. Second, the District Court erred in refusing to accept expert testimony offered to establish that the basic premise upon which the Committee seeks to justify its interrogation, namely, that there is a danger to internal security which justifies interference with First Amendment rights, is not supported in fact. Under the circumstances shown by this record, the issue should be resolved by a determination that the First Amendment rights asserted by the petitioner are sufficient to bar governmental interrogation.

II.

The Committee, like Congress itself, is bound by its rules and the rules of the House. Petitioner is entitled to a good faith application of those rules to him. He was therefore entitled to be heard in executive session because his case clearly comes within the provisions of Rule IV-A of the Committee rules or, at the very least, he was entitled to a good faith consideration by the Committee of his right to an executive hearing. He did not receive either an executive hearing or good faith consideration of his request for the same.

III.

Rule XI of the Rules of the House, read in conjunction with 2 U. S. C. §192, is too vague to support a criminal conviction. The meaning attributed to it by this Court in the *Barenblatt* case can be derived from the language of the rule only through extensive investigation into legislative history. Such an investigation is not justified in a criminal

prosecution. The Fifth Amendment requires that a criminal statute, to support a conviction, must be clear on its face.

IV.

The questions contained in Counts 2 and 4 of the indictment were so vague as to be in violation of the Sixth Amendment. The word "colonize" as used in those questions is indefinite and unclear.

V.

The powers exercised by the Committee are outside its jurisdiction and in violation of the First Amendment to the Constitution.

This point is not briefed herein since it appears to be in conflict with the decisions of this Court in the *Barenblatt*, *Braden* and *Wilkinson* cases, but petitioner does not wish to be understood to have acquiesced in those decisions without, at least, this note of protest.

POINT I

In the Circumstances Shown Here Petitioner's Interest in the Protection of His First Amendment Rights, and His Right of Privacy, and the Public Interest in Both Outweighed the Public Interest in Securing Answers to the Questions Which Were the Subject of the Indictment.

We think this Court made a serious error when it said in *Barenblatt* v. *United States*, 360 U. S. 109, 126:

> "Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown."

We suggest that this was a mistake for two reasons. Fundamentally it reduces the force and significance of those basic rights protected by the First Amendment which are essential to the preservation of our democracy (see dissenting opinions in *Barenblatt* v. *United States*, *supra*, at page 134; *Wilkinson* v. *United States*, 365 U. S. 399, 415; and *Braden* v. *United States*, 365 U. S. 431, 438). In addition, the Court has set up a standard of criminal liability which is difficult, if not impossible, to apply and which adds immeasurably to the vagueness which is inherent in the resolution which defines the Committee's jurisdiction. See *Watkins* v. *United States*, 354 U. S. 178 at 202.

However, this Court has made its decision, and is therefore confronted with the task of defining and exploring the "balancing concept" which has been the subject of so much discussion in the past few years. See dissenting opinions cited above; also *Konigsberg* v. *California*, 366 U. S. 36, 56; *Bates* v. *Little Rock*, 361 U. S. 516 and many other cases. Also, Kalven: Mr. Alexander Meiklejohn and the Barenblatt Opinion, 27 Univ. of Chicago L. Rev. 314; Kalven and Steffen: The Bar Admission Cases, 21 Law In Transition 155, 173; Charles Black: Mr. Justice Black, The Supreme Court and the Bill of Rights, 222 Harpers Magazine 63 (February, 1961); Meiklejohn, Political Freedom (1960). This is a very difficult task but must be undertaken unless the process of balancing is to become a cover-up for arbitrary and *ad hoc* decisions which would be intolerable in any case but even more so in a criminal prosecution.

The questions raised by the *Barenblatt* formula are many and most of the answers await illumination by this Court. We are required to balance competing rights and interests. The private rights involved can be reasonably well defined

—it is the right to remain silent of which Mr. Justice Jackson spoke so eloquently in *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624, 633—the right to hold unpopular and even hateful political, religious or social views without proclaiming them to the public under threat of punishment for crime. All will agree—in fact all *have* agreed—that such private interests are weighty (see, for example, *Watkins* at p. 196 ff; *Shelton* v. *Tucker*, 364 U. S. 479, 486).

The public interests are not so easy to define, but they would seem to fall, some on one side and some on the other side of the scale.

On the one side, in favor of the broad right of governmental interrogation, is the vital interest to protect public order against subversion and illegal or violent overthrow; on the other is the public interest in keeping open channels of free discussion so that our democracy may live.

Having once determined on the scope of private rights and public interests to be weighed in this balance, the next question is who performs this weighing operation and how. Clearly the balance must be struck by the court rather than the legislature because otherwise the determination of the legislature to invade private rights would be decisive, and we know that this cannot be true. *Bates* v. *City of Little Rock*, 361 U. S. 516; *National Association For The Advancement of Colored People* v. *Alabama*, 357 U. S. 449; *Scull* v. *Virginia*, 359 U. S. 344; *Shelton* v. *Tucker*, 364 U. S. 479.

But this leaves open two critical issues: (1) how does the court get the information which would enable it to balance private rights and public interests, and (2) what did this Court mean when it directed that the balance was to be related to "the particular circumstance shown." Did the

Court mean that in the circumstances in which we now find ourselves, in this decade of the Twentieth Century in the United States, free speech rights asserted by alleged Communists *never* outbalance the Government's right to interrogate (as compared, for example, to the constitutional rights to equal treatment asserted by Negroes which, evidently, often outweigh governmental interrogation by southern states)? Or did this Court mean that the trial court would hear evidence on the circumstances shown in each case and would, on that evidence, decide which way the balance must fall?

This case was tried shortly after the decision in *Barenblatt* had made it clear that the rights which we thought were protected by *Watkins* and *Sweezy* were in fact not protected at all. So petitioner and counsel addressed themselves to the problem of "balancing" in accordance with the opinion of the Court in *Barenblatt*. We argued below, and argue here, that in our system of laws, guilt is individual and each defendant is entitled to be tried on the record made in his own individual case. It follows that the trial court must, in each case, weigh the evidence separately. Among the elements to be considered in determining guilt is the balance, "in the particular circumstances shown," that this Court has ordered to be struck between the various rights and interests at stake. Therefore we offered evidence, first, that in view of the information already in the possession of Congress, the interest of Congress in getting the repetitive information it sought from petitioner was trivial and could not outweigh the public interest and private rights on the other side of the scale, and, second, that the general political situation was such that the information sought by the Committee was not important.

Both courts below disposed of this argument with the remark that:

"It is not a question of fact as to what elements go to make up the balance of interests, public and private, but a legal matter which is within the province of the court to decide" (Court of Appeals decision, 287 F. 2d 292, at 298).

We respectfully suggest that this holding is an evasion of the issue. The question remains, how does the Court decide? Does each Judge make this decision on the basis of his personal political views as to the relative importance of things in this changing world so that the standard is as variable as the Chancellor's foot, or does the Court act in what we have all understood to be a judicial manner, namely, upon the consideration of objective facts presented to it on the basis of a record made in open court with full opportunity on the part of all parties to present these facts and have them determined by the tribunal?

A.

The testimony which the petitioner was called upon to give was at most cumulative and the governmental interest in securing it was trivial.

This is not the first time there has been a congressional investigation of communist "infiltration" in basic industry. As Committee's counsel testified, similar investigations were carried on in Buffalo, Flint, Denver, New Haven, Baltimore, St. Louis, North Carolina, Youngstown and New Orleans, all prior to the hearing in which petitioner testified (R. 44-47, 50).[1] The hearings in these other places were not

[1] Hearings before the Committee on Un-American Activities, House of Representatives, as follows:

casual or preliminary to the Gary hearing but occupied literally thousands of pages of testimony and involved the calling of well over a hundred witnesses. The testimony in many of these hearings differed in no material respect from the testimony given at Gary. The Buffalo hearing and the hearings in Baltimore were almost carbon copies of those in Gary. The testimony sought in the Gary hearing was entirely cumulative.[2] It could not have added any

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83rd Cong.

Investigation of Communist Activities in the State of Michigan (Parts VIII through X, Flint), pp. 5487-5751.

84th Cong.

Investigation of Communist Activities in the Rocky Mountain Area (Parts I and II), pp. 473-4301.

Investigation of Communist Activities in the St. Louis, Missouri Area (Parts I through IV), pp. 4721-5084.

Investigation of Communist Activities in the Youngstown and Northern Ohio Areas, pp. 5877-6038.

85th Cong.

Investigation of Communist Activities in the New Orleans, Louisiana Area, pp. 119-178.

Investigation of Communist Activities in the Baltimore, Maryland Area (Parts I and II), pp. 391-1086.

Investigation of Communist Activities in the Buffalo, New York Area (Parts I and II), pp. 1601-1808.

[2] The hearings themselves are replete with admissions by Committee counsel and members of the Congress that the testimony was cumulative. Thus Mr. Tavenner at the St. Louis hearings pointed out that the Committee first heard evidence of the "colonization" program from the witness Philbrick. He further pointed out that the Committee, at the Flint hearings, was able to get extensive proof of the colonization procedures. Then Mr. Scherer commented on the testimony at Flint and Mr. Tavenner mentioned that similar testimony had been secured at the Rocky Mountain Area hearings (see Hearings, 84th Cong., p. 4773).

Similar examples could easily be drawn from other hearings. In fact, at the Gary hearing Mr. Tavenner reminded the Subcommittee "that we received a considerable amount of evidence at Flint, Michigan, of probably eight or ten instances of colonization of the exact type that you describe." Mr. Walter commented on similar cases in North Carolina. Mr. Tavenner followed with a reference to the testimony at Colorado University (R. 166, 167).

information of significance to the tremendous amount of testimony already in the possession of the Committee.

An examination of the specific questions which are the subject of the indictment herein makes this even more clear. Count 1 relates to petitioner's residence prior to September, 1957. The Committee had that information not only from other witnesses on the subject but from the employment record of petitioner. Mr. Tavenner testified:

> "Q. Did you have any information as to where he resided prior to September 1957? A. Yes. . . .
>
> Q. And you had in your files work records from, I suppose, his employer indicating that he had worked in Gary until some time . . . A. Our investigator had procured information as to his application for employment and the fact that he was employed and had been.
>
> Q. And that he lived in Gary prior to September, 1957? A. That's right" (R. 59, 60).

The same is true about Count 3 in the indictment. There the Committee was inquiring as to the witness' membership in the Communist Party nine years before he testified. It had in its files extensive information on that very subject, and Mr. Tavenner testified that he had the sworn testimony of witnesses at previous hearings (R. 58). What possible difference could it have made to the Congress of the United States whether petitioner was or was not a member of the Communist Party in 1949 while a student at the University of Michigan? Assuming that the subject was pertinent, what further information could it get for legislative purposes aside from the information it already had. It was not engaged in a judicial proceeding in which it was required to make a finding on disputed facts. It was engaged in a legislative proceeding; there was no dispute as to the facts and the answer to this question could not conceivably have influenced Congress in determining what sort of legislation to enact.

The questions contained in Counts 2 and 4 are not only so vague that they cannot properly be the subject of an indictment (see Point IV below), but, as already noted, they, too, constitute cumulative evidence. See, as one of many examples, the testimony of Turoff and Ingerman, Buffalo hearing, 85 Cong. 1st Sess., pages 1568-1599; 1650-1666.

Thus, none of the testimony sought by the questions which are the subject of the indictment was intended to elicit information which Congress needed. The purpose, of course, was actually one which has always been the purpose of the Committee, namely, to expose alleged party members with all of the consequences that the Court noted in the *Watkins* decision.

Against this there must be set those basic constitutional rights which were infringed by this examination. Both *Watkins* and *Barenblatt* make it clear that a Congressional Committtee in conducting investigations into a witness' political activities and associations, is infringing on his first amendment rights and that such infringement is not to be permitted in the absence of a substantial public interest. No such substantial public interest can be found in the present case.

B.

THE COURT ERRED IN EXCLUDING FROM THE RECORD THE PROFFERED TESTIMONY OF PROFESSOR EMERSON, OFFERED ON THE ISSUE OF THE BALANCING OF PUBLIC INTEREST.

If the Court, in its enigmatic language in *Barenblatt*, meant to refer, not to the specific circumstances surrounding a particular hearing, but rather to a general political situation which is presumed to exist, we must, difficult

though it may be; address ourselves to this general political situation.

It should be noted first, that this Court does in fact balance interests separately in each case. Thus in *NAACP* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516, and *Shelton* v. *Tucker*, 364 U. S. 479, this Court separately considered the facts in each case. And, after balancing them, it came to the conclusion that the rights of the individuals involved outweighed the right of the state in securing information which impinged on First and Fourteenth Amendment rights. The same procedure should have been followed here but it was not.

In the *Barenblatt* case, the Court (at page 128 et seq.) made certain "findings" with respect to the alleged threat of communism to the United States. We assume that those findings were made on the basis of the record in that case, together with additional facts of which the Court took judicial notice. In the instant case there are no facts in the record for the basis on which any finding could be made that communism constitutes a sufficient threat to the United States to justify interference with first amendment rights which, it must be generally conceded, exist here. So we must assume that the District Court took judicial notice of the facts it was required to find under the *Barenblatt* decision, namely, that in balancing the competed rights and public interests at stake in these circumstances, governmental interrogation was permitted.

Generally speaking, a Court may take judicial notice of facts which are "common knowledge" but the doctrine of judicial notice can never constitutionally be utilized to bar evidence seeking to contradict such "common knowledge." Testimony is always admissible on any factual issue before the Court. As the Supreme Court said in *Ohio Bell Telephone Co.* v. *The Public Utilities Commission of Ohio*, 301 U. S. 292, 301:

"Moreover, notice, even when taken, has no other effect than to relieve one of the parties to a controversy of the burden of resorting to the usual forms of evidence, Wigmore, Evidence §2567; 1 Greenleaf, Evidence, 16 Ed., p. 18. 'It does not mean that the opponent is prevented from disputing the matter by evidence if he believes it disputable.' *Ibid.*"

In *Grand Opera Co.* v. *Twentieth Century-Fox Film Corp.*, 235 Fed. 2d 303, 307 (C. A. 7, 1956), the Court said:

"Judicial notice is merely a conventional method of taking evidence to establish facts."

To the same effect, see *In re Bowling Green Milling Co.*, 132 Fed. 2d 373 (C. C. A. 6, 1942); *United States* v. *Aluminum Co. of America*, 148 Fed. 2d 416 (C. C. A. 2, 1945).

In order to establish his contention, that in the circumstances shown in this case private and public interests in protecting freedom of speech outweighed the public interest in permitting interrogation, petitioner offered expert testimony on the subject, it being difficult to conceive of any alternative way in which proof addressed to this issue could be presented in a court. Hence, expert testimony of Professor Thomas I. Emerson, Professor of Law at Yale University was prepared in writing and was submitted to to the Court at the trial for a ruling as to admissibility. The Court refused to accept the tesfimony, but the offer of proof is a part of the record and appears at R. 93-115. This testimony may be summarized as follows:

The witness first qualified himself as an expert, setting forth his professional background since his graduation from Law School in 1931. After extensive and widespread experience in government service he became a member of the faculty at Yale Law School in September, 1946. Since that

time his major field of research has been public law and within that general area, political and civil rights. He has written a two volume work on the subject, a second edition of which was published in 1958, and since 1946 he has maintained an extensive file of material on this subject. In the academic year 1953-1954 he studied civil liberties in Great Britain; for the academic year 1960-61 he received under a Fellowship from the Ford Foundation to study the legal foundations of the right of political expression. He is in close touch with other academic communities through contacts with faculty members, students and other organizations within various educational institutions. He is fully familiar with the work of the House Committee on Un-American Activities (R. 93-97).

Professor Emerson then outlined in considerable detail legislation already in existence relating to the protection of internal security in the United States. He discussed the social conditions which might give rise to political and social unrest, and the strength of the Communist Party, the organization against which this Committee has directed most of its activities. He pointed out that in political activity, in industry, agriculture, labor, religion, education and in other areas of American life the Communist Party has substantially no influence. He further noted that the Committee had already collected a great deal of information on the very subject under investigation at Gary, at hearings held in New Orleans, Buffalo, North Carolina, Denver, St. Louis, New Haven and Youngstown (R. 100-108).

Professor Emerson then turned "to the other side of the scales" and considered the interest of the individual and of society in freedom of speech. He discussed the interests of the individual in his right of expression and in his right of silence and the nature of the interest of society in freedom of political expression in a democratic society. Such

a right of expression is, he pointed out, necessary to a healthy functioning of society. He considered in some detail the economic and social effects upon the witness called before the Committee as well as the effect on his right of association (R. 108-114).

In conclusion Professor Emerson stated it as his opinion

> "that the interests of the Government in obtaining answers to the questions put to this defendant as an aid in developing further legislation to protect internal security are substantially outweighed by the interests of the individual in freedom of speech or silence, as he may prefer, and by the interests of the community in maintaining freedom of political expression and other conditions essential to maintaining an open society" (R. 115).

The issue here is not the merits of Professor Emerson's testimony or its weight, but only its admissibility. It seems clear that if the balancing concept established by the Court in the *Barenblatt*, *NAACP*, and *Shelton* cases, *supra*, is to be applied in a way that will protect the constitutional liberties of petitioner and others similarly situated, testimony on the subject must be admissible. Otherwise, there is no way in which the Court can balance those interests save by its own speculation.

POINT II

The Committee Violated Its Own Rules in Failing to Consider Petitioner's Request for an Executive Session.

Over the past generation there has been much criticism of the way in which various congressional committees, and particularly this Committee, have conducted their affairs. It has been widely charged that the rights of witnesses are not sufficiently protected, and that the Committee acts in an irresponsible fashion. See *Barsky* v. *United States*, 167 F. 2d 241, 250 (C.A.D.C. 1948).

In 1955, in response to this criticism, the House of Representatives adopted a series of amendments to its Rules designed to protect the rights of witnesses. These rules, together with the rules of each separate committee, constitute the charter of authority of the committees and prescribe the limitations on their authority. *Barenblatt* v. *United States*, 360 U. S. 109, 117.

Just as an executive or administrative agency or indeed a court may not proceed in violation of its own rules (*Service* v. *Dulles*, 354 U. S. 363; *Peters* v. *Hobby*, 349 U. S. 331), so Congress may not proceed without regard to its rules. (*Christoffel* v. *United States*, 338 U. S. 84; *United States* v. *Ballin*, 144 U. S. 1; *United States* v. *Smith*, 286 U. S. 6.)

It is clear from the rules themselves that they are intended for the protection of witnesses. Thus, for example, Rule XI, Paragraph 26(j) provides:

> "A copy of the committee rules, if any, and paragraph 36 of Rule XI of the House of Representatives shall be made available to the witness."

There would be no point in providing that witnesses are to be given a copy of the rules unless they have rights which arise therefrom.

Rule IV-A of the Rules of Procedure of the Committee provides that if a majority of the Committee believes that interrogation of a witness might unjustly injure his reputation, the Committee shall interrogate him in executive session (R. 43). It would seem that this rule would require the Committee to consider, as to each witness appearing before it, whether an executive session was in fact desirable for the purpose of the protection of the witness.*

In fact, the Committee followed no such procedure. The standard used by the Committee in determining whether or not to call a witness in executive session, or even to interview him privately before calling him in public session, was set forth by Mr. Tavenner; normal practice, he said, is "to interview people if there is any chance in the world of obtaining cooperation from them" (S.M. 113).

Congressman Walter likewise set forth the standards applied by the Committee in determining whether to grant an executive session. See his testimony at R. 70. He first said that:

> "The rule with respect to an executive session was not applicable because . . . the man was a known communist; that he had been active in the international conspiracy, and that he had deceived his employer; and, furthermore, he came within the category of those people those people that we were experiencing a great deal of difficulty in finding out about with respect to the colonization."

* Rule XI, Paragraph 26 (m) of the House itself contains similar provisions, but Mr. Tavenner said that in the Committee's opinion it was not applicable here (R. 41). We disagree, but admittedly Rule IV-A of the Committee's Rules does apply (R. 44).

Mr. Walter was further questioned as to the considerations the Committee uses in determining whether to hold executive sessions. He answered:

> "This is usually done when the Committee is fearful lest the witness will mention the name of somebody against whom there is no sworn testimony; and in order to prevent the name of somebody being mentioned in public that we are not sure has been active in the conspiracy . . . we have an executive hearing" (R. 82).

It is clear from both the testimony of Mr. Tavenner and Mr. Walter that the Committee, in determining whether to have executive sessions, ignored § IV-A of its own rules which, as is noted above, provides for an executive session when public interrogation of a witness might unjustly injure his reputation.

Nor was this the full extent to which the Committee disregarded its own rules. Petitioner here specifically requested an executive session precisely because he wished to avoid the unfavorable publicity to him which would result if he were called in public session (Deft's Exh. 1). The Committee failed even to consider the request. Counsel for petitioner, in a communication addressed to counsel for the Committee, requested an executive session. This request was denied by the Staff Director who, it was later claimed, had no authority to act. Whether or not he had authority is not important for the request was ignored even when it was renewed at the time of the hearing (Govt. Exh. 2, R. 126).

Mr. Walter conceded that the events which followed, culminating in the contempt citation, the indictment and the trial, might not have eventuated, had the Committee considered the request for an executive session. Thus he

argued that the request for an executive session should have been sent to him instead of to counsel for the Committee and went on to remark

> "I am sure this could not have happened had you addressed your telegram to me" (R. 69).

Subsequently he repeated that if he had known of the request for an executive session so that the Committee could have given it due consideration "we might have a different situation today" (R. 70).

Mr. Walter's contention that the telegram should have been sent to him instead of counsel hardly excuses the failure of the Committee to adhere to its own regulations or to apply the standards that are therein set forth. The telegram was sent to the Committee four days before the hearing and the request for an executive session was denied by an authoritative representative of the Committee within a few hours. Counsel was prevented from renewing the request at the hearing itself by the action of Congressman Walter. If it is true, as Congressman Walter suggested, that this was all a misunderstanding, that Mr. Arens did not have the authority to deny the request for an executive session, that he did not understand what petitioner's counsel was trying to say at the hearing, and that if the matter had been presented to the Committee the citation for contempt might not have followed; then certainly common fairness requires that the indictment should be dismissed.

It cannot even be contended here that there was a *pro forma* compliance with the rules of the Committee; certainly there was no effort to apply them impartially and in good faith. Yet a good faith compliance with the rules is exactly what petitioner was entitled to (*United States ex rel. Accardi* v. *Shaughnessy*, 347 U. S. 260).

POINT III

Rule XI Read in Conjunction With 2 U. S. C. § 192 Is Too Vague to Support a Criminal Conviction.

House Rule XI read in conjunction with 2 U. S. C. 192 must be treated as a criminal statute. *Sacher* v. *United States*, 356 U. S. 567, 577; *Watkins* v. *United States*, *supra*, at 208. Therefore, to be valid, Rule XI must establish a standard of conduct that meets the test of *Lanzetta* v. *New Jersey*, 306 U. S. 451; *Winters* v. *New York*, 333 U. S. 507 and *Raley* v. *Ohio*, 360 U. S. 423. Quite aside from petitioner's right to rely on the decision in *Watkins* which was argued before this Court on behalf of the petitioner in *Braden* v. *United States*, *supra*, and disposed of by reference to *Sinclair* v. *United States*, 279 U. S. 263, we raise here a due process question going to the uncertainty of the meaning of the criminal statute under which petitioner was convicted. If a criminal statute is uncertain, it cannot support an indictment.

This Court said in the *Raley* case, *supra*, at p. 438:

> "* * * A State may not issue commands to its citizens, under criminal sanctions, in language so vague and undefined as to afford no fair warning of what conduct might transgress them. *Lanzetta* v. *New Jersey*, 306 U. S. 451. Inexplicably contradictory commands in statutes ordaining criminal penalties have, in the same fashion, judicially been denied the force of criminal sanctions. *United States* v. *Cardiff*, 344 U. S. 174. Here there were more than commands simply vague or even contradictory. There was active misleading. Cf. *Johnson* v. *United States*, 318 U. S. 189, 197. The State Supreme Court dismissed the statements of the Commission as legally erroneous, but the

fact remains that at the inquiry they were the voice of the State most presently speaking to the appellants. We cannot hold that the Due Process Clause permits convictions to be obtained under such circumstances" (360 U. S. 423, 438-9).

It is true that the majority in the *Barenblatt* case was able to assign a meaning to the vague language contained in Rule XI. This it did after a study of the twenty year history of the Committee in the course of which reference was made to debates on the original authorizing resolution in the 75th Congress, to seventeen House Reports from the 76th Congress to the 85th and to twenty-three House Resolutions extending over the same period of time. It may be that such an historical survey justifies the conclusion to which the Court came as to the intent of Congress. The difficulty is that we are not here concerned with the intent of Congress, but rather with the guilt or innocence of petitioner who is entitled to read a statute and to base his conduct on a fair interpretation of the words set forth therein.

It is unreasonable to expect that petitioner would understand that the word "un-American" really meant "Communist Party", especially a few months after the Chief Justice of the United States, in an opinion joined in by a majority of this Court, had been unable to define the words. It is unreasonable to expect that petitioner would interpret the words "propaganda activities" as meaning "any activity" (see testimony of Mr. Walter at R. 76).

We know of no case prior to *Barenblatt* in which a court was compelled to rely on legislative history in order to uphold a criminal conviction and we respectfully suggest that to the extent to which the Court was compelled to rely on such history in the *Barenblatt*, *Braden* and *Wilkinson* cases it did so in clear violation of the most funda-

mental rights guaranteed under the due process clause. If a statute is clear on its face (and no one can reasonably contend that this statute is clear), there is no occasion for resort to legislative history; if a state is unclear on its face it cannot support a criminal conviction.

We are aware of the fact that the contention we are here making was inherent in the record in *Barenblatt*, *Braden* and *Wilkinson* and it seems to have been argued in the *Braden* case. However, it was not considered in any of the three opinions.

Assuming that the Committee had the jurisdiction it claims (as the Court found in *Barenblatt*) and assuming further that the intent of the defendant in a §192 case is not relevant, as the Court held in *Sinclair* and *Braden*, the constitutional objection remains that the statute is unclear and that the tests set forth by this Court in the earlier cases, cited above, cannot be met.

POINT IV

The Questions Contained in Counts 2 and 4 Were Too Vague to Support an Indictment.

The question which forms the basis of Count 2 of the indictment reads as follows:

> "Will you tell the Committee, please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1957?"

The question which forms the basis of Count 4 of the indictment reads as follows:

> "Will you tell the Committee, whether or not in 1957 there were present in any of the steel unions at

Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party?"

The terminology employed in both of these questions is so vague that it cannot meet the requirements of the Sixth Amendment, that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation. See also Rule 7c, Federal Rules of Criminal Procedure, 18 U. S. C.

The Government urged that the appellant understood the meaning of the word "colonize" as used in the questions put to him. This answer, we respectfully request, shows a misconception of the nature of petitioner's argument. The issue was not whether he understood the question, but whether the indictment met the requirements of the Sixth Amendment and of Rule 7c of the Rules of Criminal Procedure. *O'Connor* v. *United States*, 240 Fed. 2d 404, 405; *United States* v. *Lattimore*, 215 Fed. 2d 847.

In both of those cases, the Court held that the questions set forth in the indictment must be definite and clear if the statutory and constitutional requirements are to be met. It was not suggested in either opinion that the defendant did not understand the meaning of the questions put to him, or that such understanding on his part would have been relevant.

Indeed, in the *Lattimore* case, the indictment was dismissed prior to trial. Similar action was taken recently in the District of Columbia where Judge Letts in *United States* v. *Grumman*, Criminal No. 752-58, dismissed several counts of an indictment prior to trial because the indictment used the word, "communist," and the defendant argued successfully that that word was too vague to meet statutory and constitutional requirements.

As in this case, the Government argued, in *Grumman*, that the context in which the question was argued made it clear to the witness that the word, "communist," was synonymous with "Communist Party," but Judge Letts held otherwise.

Under these circumstances, it is respectfully suggested that the 2nd and 4th Counts should be dismissed.

As we noted above, the questions which form the basis of Counts 1 and 3 called for information in the possession of the Committee and hence even if they had slight pertinency were of such trivial importance that they cannot be said to outweigh petitioner's constitutional rights. With the disposition of Counts 2 and 4 as suggested above, the indictment must fall.

POINT V

The Committee Acted in Violation of the First Amendment to the Constitution and in Excess of Its Authority.

In the *Barenblatt, Braden* and *Watkins* cases, to say nothing of the other cases argued at this Term of the Court, the petitioners generally have contended that there was no genuine legislative purpose to the investigation carried on by the Committee, and that the Committee in general was engaged in activities which violated the First Amendment to the Constitution. This Court has on several occasions now by closely divided vote rejected these arguments and we shall therefore not set them forth again. We mention them here merely as a reminder to the Court that in the opinion of many this Committee constitutes a basic threat to American freedom and that it has over a period of a generation functioned in violation of the constitutional rights of those who have been called before it.

Conclusion

Petitioner's conviction should be reversed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 477

EDWARD YELLIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals is reported at 287 F. 2d 292.

JURISDICTION

The judgment of the court of appeals was entered on February 16, 1961, and a petition for rehearing was denied on April 3, 1961. On April 21, 1961, Mr. Justice Black extended the time to file the petition for a writ of certiorari to and including June 2, 1961. The petition was filed on May 31, 1961 and certiorari was granted on October 9, 1961 (R. 299). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the questioning of petitioner by the House Un-American Activities Committee concerning his membership in the Communist Party and the Party's program of "colonization" of the steel industry was pursuant to a valid legislative purpose and consistent with petitioner's rights under the First Amendment.

2. Whether the trial court erred in excluding expert testimony on the factors which should be considered by the court in determining petitioner's rights under the First Amendment.

3. Whether petitioner was convicted under a statute which is unconstitutionally vague.

4. Whether the Committee violated its own rules in refusing to question petitioner in executive session.

STATUTES AND RULES INVOLVED

Section 192 of Title 2, U.S.C. (R.S. 102, as amended) and the pertinent portions of Rule XI of the House of Representatives and of the Rules of the Committee on Un-American Activities are set forth in petitioner's brief at pages 3–4.

STATEMENT

Petitioner was charged in a five-count indictment with having refused, in violation of 2 U.S.C. 192, to answer questions pertinent to the matter under inquiry asked him by the Committee on Un-American Activities of the House of Representatives. Count 5 was dismissed on motion of the government (R. 11). Upon a trial without a jury, the court found petitioner guilty as charged in Counts 1, 2, 3, and 4. The court imposed a sentence of one year on each count,

the sentences to run concurrently, and a fine of $250 (R. 116–118). The court of appeals affirmed the conviction.

The pertinent facts may be summarized as follows:

1. The Committee on Un-American Activities passed a resolution on January 15, 1958, providing that hearings would be held in Gary, Indiana, to inquire into (Hearings,[1] p. 1956):

> 1. The extent, character, and objects of Communist infiltration and Communist Party propaganda activities in basic industry in the Gary, Indiana, area, the legislative purpose being to obtain additional information for use by the Committee in its consideration of Section 16 of H.R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and willfully becoming or remaining a member of the Communist Party with knowledge of the purpose or objective thereof, and for the additional legislative purpose of adding to the Committee's overall knowledge on the subject, so that Congress may be kept informed and thus prepared to enact remedial legislation in the national defense and for internal security when and if the exigencies of the situation require it.
>
> 2. Execution by administrative agencies concerned of Public Law 637, of the 83rd Con-

[1] Hearings before the Committee on Un-American Activities, House of Representatives, 85th Cong., 2d Sess., entitled "Investigation of Communist Infiltration and Propaganda Activities in Basic Industry (Gary, Ind., Area)." This document, which is hereinafter referred to as "Hearings," constitutes Gov. Ex. 15.

gress known as the "Communist Control Act of 1954", relating to the eligibility to exercise the rights and privileges provided under the National Labor Relations Act of labor organizations determined by the Subversive Activities Control Board to be Communist-infiltrated organizations. The legislative purpose is to assist Congress in appraising the administration of the Communist Control Act of 1954 and to enact such amendments thereto as the exigencies of the situation require.

3. Any other matter within the jurisdiction of the Committee which it or any subcommittee thereof, appointed to conduct this hearing, may designate.

Petitioner was subpoenaed to appear at the hearings in Gary on February 10, 1958. His counsel sent a telegram to the Committee's counsel on February 6, 1958, asking that petitioner be questioned in executive session because "[t]estimony needed for legislative purposes can be secured in executive session without exposing witnesses to publicity" (Def. Ex. 1). On that same date, the Staff Director of the Committee telegraphed petitioner denying the request (Def. Ex. 2).

Public hearings were held in Gary, Indiana, by a subcommittee on February 10 and 11, 1958. At the opening of the hearing on February 10, the chairman of the Committee, in petitioner's presence (Hearings, p. 1977), read the above-quoted resolution of the Committee authorizing the hearings and explained at length the purpose of the hearings in Gary (*id.* at 1955–1957). The chairman stated, *inter alia*, that the subcommittee was "in Gary for the purpose of re-

ceiving testimony concerning Communist techniques and tactics of infiltration and the extent, character, and objects of Communist Party propaganda activities in basic industries"; that such an inquiry had great importance to internal security; that the hearing was intended as part of the Committee's "surveillance over existing security legislation," including the Internal Security Act, the Foreign Agents Registration Act, the Communist Control Act, and various espionage statutes "for the purpose of recommending any needed legislative amendments"; and that the Committee hoped to secure information useful in its consideration of H.R. 9352, an omnibus bill to amend the Internal Security Act of 1950, which was pending before it (*id.* at pp. 1956–1957).

Petitioner was present (Hearings, p. 1976) at the time John Lautner, the first witness at the hearing, testified (*id.* at pp. 1958–1974). Mr. Lautner, who was an organizer and high functionary in the Communist Party from 1930 to 1950, testified that in 1945 the Party condemned the "revisionist" policies which it had followed under its former leader, Earl Browder, and returned to the basic principles of Marxism-Leninism; that, after the Party was reconstituted, it re-established its policy of concentration in basic industry; that as a result of this policy "colonization" was begun and Party "colonizers" were sent to all parts of the country to coordinate Party work in basic industries including the steel industry (*id.* at pp. 1964–1965); and that these colonizers were generally young Party members from colleges and universities who left to become "professional revo-

lutionaries" (*id.* at p. 1967). Mr. Lautner further testified that (*id.* at p. 1968):

> Lenin said:
>
> > "It is necessary to be able to withstand all this, to agree to any and every sacrifice, and even—if need be—to resort to all sorts of devices, manoeuvres, and illegal methods, to evasion and subterfuge, in order to penetrate into the trade unions, to remain in them, and to carry on Communist work in them at all costs."
>
> This is the underlying principle on the basis of which these people [the colonizers] will deny their name, will deny their education, will deny everything, because that denial furthers the aims and objectives of the Communist Party. It would be a liability for him to be a worker in the mill if he has a college degree; it wouldn't look good. There would be immediately a suspicion of an ulterior motive in that, so they are carrying out a Leninist policy when they do that.

Petitioner, the second witness appearing on February 10, was questioned immediately after Lautner (Hearings, pp. 1974–1988). Petitioner answered preliminary questions as to his name and present residence. When the Committee chairman refused to allow petitioner's counsel to read into the record the telegrams between himself and the Committee, petitioner's counsel stated that he would be satisfied if the record showed that the exchange of telegrams had occurred (*id.* at p. 1974). Petitioner then refused to answer the question, "Where did you reside prior to September, 1957?" (Count 1) (*id.* at pp. 1974–1975). He stated as his grounds for refusing

to answer that the First Amendment forbids Congress to investigate opinions and beliefs; that the authorizing resolution of the Committee is so vague that it might deprive him of due process of law; and that the question was not pertinent to any legislation (*id.* at pp. 1976–1977). After petitioner was directed to answer the question, he explicitly stated that he relied on the First Amendment and not the privilege against self-incrimination (*id.* at p. 1977). Apparently in doubt whether petitioner was challenging the pertinency of the question to the subject under inquiry, the committee counsel ascertained that petitioner was present when the chairman made his opening statement which explained the purpose of the hearing and then stated (*id.* at p. 1977):

> This is a hearing which involves a subject described by the chairman, and it relates to Communist Party activities within the area of Gary. As far as pertinency of the question is concerned, as to which you seem to express some doubt, it would be impossible for us to learn anything from you regarding Communist Party activities in this area without ascertaining whether or not you were here for a period of time.

Petitioner then was again directed to answer the question and he again refused (*id.* at p. 1978).

Petitioner next was asked to state his formal education. He refused to answer because the question could serve no legislative purpose and violated his First Amendment rights (Hearings, p. 1978). When asked whether he was a student at the College of the

City of New York for several years prior to 1948 he invoked the same grounds and said (*ibid.*):

> [I]f the committee knows all these things, I can't see the purpose or the pertinency of asking me what they consider a known fact. Furthermore, it kind of appears to me as if this line of questioning is merely trying to create an impression and expose me for the sake of merely exposing me and not leading to any valid legislative purpose.

The Committee chairman then assured petitioner that it was not the purpose of the question to expose him.

The Committee received in evidence copies of petitioner's college record showing that he transferred from the College of the City of New York to the University of Michigan and from the College of Literature, Science and Arts at the University of Michigan to its Engineering Department in 1948 (Hearings, pp. 1979, 1980–1981) and petitioner's application for employment at the Carnegie-Illinois Steel Corporation dated June 23, 1949, which left blank the line asking for the applicant's college education (*id.* at pp. 1982, 1983–1984). Petitioner refused to answer whether his name was at the bottom of the latter application, where he was residing on June 23, 1949, whether he lived at a specified address in Gary at that time (as the application for employment said), whether he was ever employed at the Reo Motor Company in Lansing, Michigan (the application stated that petitioner had been employed at Reo from 1946 to February 1948), whether he had been employed by Modern Distributors from February 1948 to April

1948 (as the employment application showed despite the statement in the University of Michigan records that he was at the University from February 1948 until June 1949), whether he was employed by Reo from April 1948 to May 1949 (as the employment application also said), why he had failed to include on his employment application his education at the College of the City of New York or the University of Michigan, and whether "at the time you sought that employment in Gary, Indiana, in steel, you were doing it at the instance or under counseling from the Communist Party or leaders in the Communist Party" (*id.* at pp. 1982–1985). Petitioner refused to answer all these questions for the same reasons he had earlier stated.

Petitioner was then asked, "Will you tell the committee please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1937?" (Count 2) (Hearings, p. 1985). When petitioner refused to answer for the same reasons, the Committee counsel again explained the pertinency of the question (*id.* at p. 1986):

> It has been testified here that colonization of young men in the middle of their educational courses in industry was a deep-seated plan of the Communist Party to strengthen itself within basic industry. The chairman's opening statement indicated that the activities of the Communist Party within basic industries was the subject of inquiry here.
>
> * * * * *

> The statement was made here of the practice of the Communist Party in colonizing industry at Flint, Michigan; at the University of Colorado, which is at Fort Collins, Colorado, where you now reside; and other places.
>
> In order to understand the full tactics of the Communist Party in its operations here in Gary, it is necessary the committee understand fully the extent of such practices, the full purposes of it, and the methods by which it is put into effect. That is the connective reasoning of the committee in asking the question.

On the grounds already stated, petitioner declined to answer whether he was a member of the Neafus Club of the Communist Party at the University of Michigan, whether he was acquainted with Francis X. T. Crowley at the University of Michigan, and whether Crowley was correct when he testified before the Committee in 1954 that petitioner was a member with him of the Neafus Club (*id.* at p. 1987).

Petitioner refused, for the same reasons, to answer the question, "Were you a member of the Communist Party on the 23rd day of June, 1949, which is the date of application filed in your name for employment in Gary?" (Count 3) (Hearings, p. 1987). He similarly refused to answer whether he was active in the American Veterans Committee prior to June 1949, and whether he was acquainted with Edward Shaffer of Pittsburgh. Petitioner was shown a copy of the *Detroit News* dated January 7, 1949, reporting that three students, including Edward Shaffer of Pittsburgh and petitioner, resigned from the University of

Michigan Chapter of the American Veterans Committee after the Committee in its annual convention adopted a resolution calling for the ouster of members belonging to the Communist Party. Petitioner refused to answer whether this report was correct (*id.* at pp. 1987–1988). He then declined to answer, "Will you tell the committee whether or not in 1957 there were present in any of the steel unions at Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party" (Count 4) (*id.* at p. 1988). Finally, petitioner refused to answer three more questions: whether he was a member of the Communist Party in August 1957; what stand did the Party take in Gary regarding the acts of the Soviet Union in Hungary in 1956; and whether he was at the time of the hearing a member of the Communist Party (*ibid.*).

Later on February 10, the subcommittee heard the testimony of Joseph LaFleur, who worked in the steel industry in Gary and had joined the Communist Party at the request of the F.B.I. He discussed at length Communist activities in the Gary area and in the steel industry in particular. Mr. LaFleur described petitioner as one of several well-educated, young Party members who had come to Gary to help organize Party activities in the steel mills (Hearings, pp. 2016–2017). Subsequently, the Committee asked two other witnesses who worked in the steel industry whether they were acquainted with petitioner. Both refused to answer this question, as well as numerous other questions concerning Communist activities, on the basis of the First Amendment (*id.* at pp. 2055, 2063).

2. At petitioner's trial, the government's sole witness was Frank S. Tavenner, counsel for the Committee, who was present at the Gary hearings and interrogated petitioner. He testified that the purpose of the hearings was "to find out how serious the Communist propaganda activities and infiltration were in basic industry, particularly with regard to the steel industry in this area" (R. 18); that the reason that the Committee wanted the information was that it had held a series of hearings on this subject in Baltimore, Youngstown, Ohio, and other places, and the Committee was of the opinion that it might be necessary to amend various acts of Congress to "tighten up laws with regard to Communist activities in this field" (R. 18); and that the Committee considered the steel industry to be the most important basic industry in the country, and Gary, Indiana, was one of the centers of the steel industry (R. 25).

Tavenner further testified that members of the Committee introduced several bills around the time of these hearings relating to the internal security field:

H.R. 2369, sponsored by Congressman Walter, the Chairman of the Committee and of the subcommittee holding the hearings in Gary, to redefine the term "organize" as used in the Smith Act so as to include continuing acts of organizing (R. 27);

The Defense Facilities Protection Act of 1959, introduced by Congressman Scherer (who was one of the members of the subcommittee holding the hearings in Gary), to permit the federal government to guard strategic defense facilities against espionage, sabotage, and other subversion (R. 23);

H.R. 9352, an omnibus bill introduced by Congressman Walter to amend the Internal Security Act of 1950 (Gov. Ex. 14; R. 23–24);

H.R. 8121, a bill to amend the Subversive Activities Control Act of 1950 by authorizing the Secretary of Defense to provide for a security program with respect to defense contractors and their employees (Gov. Ex. 18; R. 65).

Tavenner stated at the trial that prior to calling petitioner the Committee had information that petitioner was a member of the Communist Party while at the University of Michigan in 1949; that he had previously attended City College of New York; and that he had filed an application for employment in 1949 at the Carnegie-Illinois Steel Corporation in Gary, Indiana, in which he failed to set out his college and university education (R. 34–35). Tavenner testified that the Committee wanted to find out from petitioner what knowledge he had of the execution of the Communist Party's plan to colonize the steel industry (R. 35).

On cross-examination, Tavenner stated that it was the practice of the Committee to interview prospective witnesses before subpoenaing them "if there is any chance in the world of obtaining co-operation from them" (R. 53). Petitioner was not interviewed since he was then in Denver. Tavenner admitted, however, that if petitioner had been in Gary, he probably would not have been interviewed, even though the Committee did not know whether he would cooperate, since the Committee had information that he was a member of the Communist Party (R. 53, 58,

62). Tavenner emphasized that the Committee subpoenaed petitioner to testify with the hope he would cooperate (R. 52–54) and inform the Committee whether he had concealed facts on his employment application "pursuant to a Communist Party plan to colonize [the steel] industry, and the extent to which that colonization was progressing" (R. 53). Tavenner explained that the Committee believed that petitioner had information which had not been presented by any of the witnesses at the Committee's previous hearings on the Party's industrial concentration program (R. 55):

> We knew nothing about the actual activities of the Communist Party in the steel plants in Indiana as of the time of this hearing, or shortly before. Mr. LaFleur, who did testify [at the Gary hearings], according to my recollection got out of the Communist Party in 1950.[2] This witness, Mr. Yellin, as to whom we had testimony by several people, had been a member of the Communist Party at Michigan University, and had left there and come down and taken employment in Gary.

Tavenner later testified (R. 57):

> Now, with that information relating to Mr. Yellin, we felt certain that Mr. Yellin was in a position, if he would do so, to tell this Committee a great many things regarding the plan of the Communist Party to infiltrate the steel industry here, and to building up the Communist Party from its grass roots level, and just what the Communist Party plans were to make

[2] Joseph LaFleur testified that he left the Party in 1952 (Hearings, p. 2013).

> these bright young men leaders who did this thing of colonizing.

Representative Walter, the chairman of the Committee and of the subcommittee that conducted the hearings in Gary, was called to testify by petitioner. Mr. Walter stated that he did not know of petitioner's telegram asking for an executive session until after the public hearing in Gary started, since it was not addressed to him and he had left Washington for Gary by the time the telegram arrived; that neither the Committee counsel, to whom the telegram was addressed, nor the Committee staff director, who sent the telegram refusing to hear petitioner in executive session, had the authority to pass on such a request (R. 68–69); that at the time petitioner's counsel attempted to introduce the telegrams at the hearings, "it was too late then to raise any question that might have been raised by the telegram" for "the Committee [had] already passed on the question of whether or not we would hear Mr. Yellin at a session when the purpose of calling him was discussed, and it was decided then that the rule with respect to an executive session was not applicable" (R. 69–70). When asked what considerations the Committee used in determining whether to hold an executive session, Congressman Walter testified (R. 82):

> This is usually done when the Committee is fearful lest a witness will mention the name of somebody against whom there is no sworn testimony, and in order to prevent the name of somebody being mentioned in public that we are not sure has been active in the conspiracy,

at least that there isn't sworn testimony to that effect, we have an executive hearing.

As to the Committee's purpose in subpoenaing petitioner, Congressman Walter stated that "[we] concluded that this would be a fine witness for the Committee in support of proposed legislation having to do with colonization, and, two, having to do with the protection of our defense efforts. And it is always worth a chance that somebody will testify" (R. 70). While Congressman Walter admitted that many witnesses refuse to testify, "occasionally we are very pleasantly surprised by having somebody give us information that is of great value in the drafting of legislation" (R. 82).

Petitioner called Professor Thomas I. Emerson of Yale to testify as an expert on the factors which should be considered by the district court in balancing the public and private interests in order to determine whether petitioner's First Amendment rights had been violated. The court ruled that this testimony was not admissible because it was opinion evidence on questions of law (R. 98–100, 116). Professor Emerson's testimony was then heard as an offer of proof (R. 99–115).

SUMMARY OF ARGUMENT

I

The Committee's investigation of Communist activities in basic industry and particularly in the steel industry, in the Gary, Indiana, area was pursuant to a valid legislative purpose and did not violate the First Amendment. Petitioner's basic contentions on this point, as he himself admits, have been answered by

this Court in *Barenblatt* v. *United States*, 360 U.S. 109, *Wilkinson* v. *United States*, 365 U.S. 399, and *Braden* v. *United States* 365 U.S. 431. There, the Court held that, in circumstances comparable to the present case, Congressional investigation of Communist activities has a valid legislative purpose and committees conducting such investigations may compel witnesses to testify concerning their Communist activities without violating their rights under the First Amendment.

A. The governmental interest in this case even more clearly outweighs the individual interests than in the *Barenblatt* case. Here, as in *Barenblatt*, there is no indication that the subcommittee was attempting to pillory the witness; the witness did not appear as a result of indiscriminate dragnet procedures lacking in probable cause for belief that he possessed information which might be helpful to the Committee; and "the relevancy of the questions * * * is not open to doubt." Moreover here the Committee was investigating Communist activities in basic industry, an area which is less directly protected than the field of education that was involved in *Barenblatt*, and which is of obviously great importance to the national security.

Petitioner contends that the Committee had no governmental interest in questioning him because it had all the information concerning Communist activities which petitioner could have supplied. Even if, however, the witness had no new information, there is a strong governmental interest in having the witness corroborate previous testimony—particularly since the existing evidence is in a controversial area and is

therefore likely to be challenged. In addition, while the Committee had conducted hearings on Communist activities in the steel industry in other localities, it had conducted no such investigation on the related, but distinct, subject of Communist activities in the steel industry in Gary, Indiana. There is no evidence in the record that petitioner could not have provided valuable information on this subject. Petitioner could not unilaterally determine—by comparing his own knowledge which he has not disclosed with the information possessed by the Committee—that he could supply no new information.

B. The trial court properly excluded the testimony of Professor Emerson concerning petitioner's claim that his rights under the First Amendment had been violated. The questions asked Professor Emerson sought his "opinion" "as to the various factual considerations which have to be taken into account in balancing the competing public and private interests at stake." Professor Emerson's answer principally described what legal factors the courts should consider and what weight should be given to each of these factors, not factual evidence relating to the factors which the court might consider. While this statement could properly be presented as legal argument, the trial court correctly held that it was not evidence.

Even if, however, Professor Emerson's statements were properly admissible, petitioner's conviction should still be sustained. The statement was offered solely in relation to the First Amendment issue, which was a question of law. Since the entire statement is in the record, it can properly be considered by this

Court. Professor Emerson, however, added little to the basic contentions already considered by this Court in the *Barenblatt*, *Wilkinson*, and *Braden* cases. Therefore, we submit that here, as in those cases, the Congressional investigation of Communist activities did not violate the First Amendment.

II

Petitioner contends that the statute under which he was convicted is unconstitutionally vague. Petitioner, however, was convicted of violating 2 U.S.C. 192, the contempt-of-Congress statute and this Court has repeatedly upheld convictions under that statute. The argument is in reality aimed, not at the statute under which petitioner was convicted, but at the House resolution authorizing the Committee. House Rule XI is, of course, not a criminal statute, and therefore this Court has never construed it as one. The Court has three times held that House Rule XI is sufficiently clear to authorize the Committee to compel testimony in an investigation into Communist activities. *Barenblatt* v. *United States*, *supra*, 360 U.S. at 117; *Wilkinson* v. *United States*, *supra*, 365 U.S. at 409; *Braden* v. *United States*, *supra*, 365 U.S. at 433.

III

Rule IV-A of the Committee's rules did not require that petitioner's request to appear at an executive session be granted. Rule IV-A provides that a witness may be heard in executive session whenever "a majority of the Committee * * * believes that the interrogation of a witness in a public hearing might

* * * injure his reputation." Clearly, this rule does not give a witness a right, upon request, to appear at an executive session; instead, the rule leaves it to the discretion of a majority of the Committee whether to interrogate the witness in executive session. The evidence here showed that the Committee had considered the matter and decided that petitioner should not be called in executive session. Even if Rule IV implicitly provided for judicial review—which we do not think it does—there is nothing in this record to suggest that the Committee abused its discretion.

IV

Petitioner contends that the questions involved in Counts 2 and 4 are too vague to meet the requirements of the Sixth Amendment and Rule 7(c) of the Federal Rules of Civil Procedure. Petitioner, however, is precluded from raising this issue because it was not presented in his petition for a writ of certiorari. Rule 40(1)(d)(2) of the Rules of this Court.

In any event, the Sixth Amendment and Rule 7(c) require that "[t]he indictment * * * be a plain, concise and definite written statement of the essential facts constituting the offense charged" (Rule 7(c)), so that the accused can adequately defend himself and prevent a second prosecution for the same offense. The indictment clearly stated all the elements of the offense, including the questions which petitioner refused to answer. The fact that the indictment did not spell out the meaning of the questions did not prejudice petitioner since no possible defense

turns on their meaning except that the reason petitioner had not answered the questions is that he did not understand them. But that issue—which petitioner specifically refuses to claim—depends on whether the witness understands the question at the time he refused to answer before the Committee; it would do no good, on that issue, to explain the question subsequently in the indictment.

ARGUMENT

Petitioner was convicted for refusing to answer four questions asked him by a Congressional committee during an investigation of Communist activities in basic industry, and particularly in the steel industry, in the Gary, Indiana, area. Two of these questions—where he resided prior to September 1957 (Count 1), and whether he was a Party member on June 23, 1949 (Count 3)—concerned only his own Party activities. The other two questions[3]—whether he knew of Party colonization in the steel unions in Gary before 1957 (Count 2) and whether there were Party colonizers in the steel unions in Gary in 1957 (Count 4)—concerned the Party activities of other persons but did not require the divulgence of their identity. Since petitioner was sentenced to serve concurrent terms of imprisonment and to pay a fine which was less than the maximum authorized by the statute under any one count, the judgment below must be affirmed if petitioner's refusal to answer any one of the questions was unlawful. *E.g., Barenblatt* v. *United States,* 360 U.S. 109, 115.

[3] The indictment contained five counts, but Count 5 was dismissed on motion of the government (R. 11).

I

THE COMMITTEE'S INVESTIGATION OF COMMUNIST ACTIVITY IN BASIC INDUSTRY WAS PURSUANT TO A VALID LEGISLATIVE PURPOSE AND DID NOT VIOLATE THE FIRST AMENDMENT

As he himself admits (Pet. Br. 14–15, 34), petitioner's basic contentions that the Committee was not acting pursuant to a valid legislative purpose and that it violated his rights under the First Amendment have been answered by this Court in *Barenblatt* v. *United States, supra, Wilkinson* v. *United States,* 365 U.S. 399, and *Braden* v. *United States,* 365 U.S. 431. Those cases established that Congressional investigation of Communist activities, in circumstances comparable to the present case, has a valid legislative purpose and that committees conducting such investigations may compel witnesses to testify concerning their Communist activities without violating their rights under the First Amendment.

Petitioner also raises First Amendment contentions which are based on the particular circumstances of the present case. In *Barenblatt, supra,* 360 U.S. at 126, this Court adopted the rule that "[w]here First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown." Petitioner contends that, unlike in *Barenblatt,* the record in this case establishes that the individual interests outweigh the governmental interests. In addition, he claims that the trial court erred in excluding the testimony of Professor Thomas I. Emerson

of Yale University concerning the balance to be struck. We submit that these contentions are without merit.

A. THE GOVERNMENTAL INTERESTS AT STAKE OUTWEIGH THE INDIVIDUAL INTERESTS IN THESE PARTICULAR CIRCUMSTANCES

The Court in *Barenblatt*, as well as in *Wilkinson* and *Braden*, found that "the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and * * * therefore the provisions of the First Amendment have not been offended" (360 U.S. at 134; see 365 U.S. at 413–415; 365 U.S. at 435). We submit that the governmental interests in this case even more clearly outweigh the individual interests involved than in the *Barenblatt*, *Wilkinson*, and *Braden* cases.

The Court in *Barenblatt* mentioned three particular considerations in weighing the private and public interests (360 U.S. at 134). First, the Court found that "[t]here is no indication in this record that the Subcommittee was attempting to pillory witnesses" (*ibid.*). Similarly, there is no such indication in this record. The subcommittee allowed petitioner to state his objections fully, and then made a considerable effort to persuade him to testify, even explaining the pertinency of the questions despite the absence of any specific objection that their pertinency was unclear (see *supra*, pp. 7, 9–10).

Second, the Court found in *Barenblatt* that the witness did not appear as a result of "indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee" (360 U.S. at 134).

Here, the Committee had information that petitioner was a long-time Party member who had actively participated in the Party's organization of the steel industry in the Gary, Indiana, area (see *supra*, pp. 13, 14), which was a vital part of the subcommittee's investigation of Communist activities in basic industry in Gary (see *supra*, pp. 3, 4–5, 7, 9–10, 12).

And, third, the Court in *Barenblatt* said that "the "relevancy of the questions * * * is not open to doubt" (360 U.S. at 134). The same is equally true in this case; indeed, the pertinency of the questions to the subject under inquiry was not only clear on the face of the questions, but was explained to petitioner at the hearing even though he did not explicitly claim any lack of pertinency to the subject under inquiry then or at any time during the judicial proceedings.

In addition to these considerations, an even more important circumstance supports the same result here as in *Barenblatt*. In the latter case, the witness was a college teacher by profession and the investigation sustained by this Court was into Communist infiltration in the field of education. In *Wilkinson* and *Braden*, the Court upheld Congressional inquiry into Communist propaganda activities. Thus, the fields of education and propaganda, although clearly within the general area protected by the First Amendment, nevertheless may be the subjects of a proper investigation; *a fortiori*, the Committee could investigate Communist activity in basic industry, which is less directly protected by the First Amendment and which has obviously great importance to the national security.

Petitioner suggests (Pet. Br. 18–21) that the Committee had no governmental interest in questioning

him since it had all the information concerning Communist activities which petitioner could possibly have supplied. He argues that the Committee had conducted hearings in other localities on the same or similar subject matter; that other witnesses at the Gary hearing testified concerning all the information known to petitioner; and that therefore the Committee sought only corroboration from petitioner. But even if petitioner's conclusion is correct and the Committee expected to receive only corroborating testimony from him, there is an important governmental interest in having a well-informed witness confirm previous testimony—particularly when the existing evidence is in a controversial area and therefore is likely to be challenged.

In the present case, moreover, it is clear that the Committee was not merely seeking to confirm evidence that it already possessed. Petitioner offered no proof that he could not have contributed new information to the investigation. He did not prove at his trial what information he had at the time the Committee questioned him. He cannot unilaterally determine—by comparing his own knowledge which he has not disclosed with the information he now claims was possessed by the Committee—that he could supply the Committee with no new information.[4]

[4] Even if petitioner had testified at his trial concerning the information he possessed at the time of the hearing, we do not think a defense would have been established merely because the Committee already had the information. At the least, petitioner would have had to give this reason for his refusal to answer at the time he appeared before the Committee. Even then, we think that the value of petitioner's information—whether it was

The hearings which investigated Party colonization activities in other parts of the country (see Pet. Br. 19) were, on their face, principally concerned with different, although related subjects. Although the Committee had information concerning two of the questions (petitioner's residence in 1957 and whether he was a Party member in 1949), these were only preliminary questions to establish that petitioner had knowledge of Party activities in the steel industry in the Gary, Indiana, area. Petitioner's answers to the other two questions concerning his own knowledge of Party activities in the steel industry in Gary (whether he knew of Party colonization in the steel unions in Gary before 1957 and whether there were Party colonies in the steel unions in Gary in 1957) might merely repeat previous testimony before the Committee. On the other hand, as the Committee hoped and expected (see *supra*, pp. 14–15), petitioner's answer might well provide new information in view of his active participation in these Party activities. The Committee had reasonable ground to believe that petitioner had information on Communist infiltration in the steel industry.

B. THE TRIAL COURT PROPERLY EXCLUDED EXPERT TESTIMONY CONCERNING THE FIRST AMENDMENT ISSUE

Petitioner also argues (Pet. Br. 21–25) that the trial court erred in refusing to consider the proffered expert testimony of Professor Emerson in weighing private and public interests in order to de-

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merely cumulative or not—was for the Committee to determine. These issues, however, are not present in this case since petitioner has never shown what information he did have.

termine petitioner's First Amendment rights. This contention is likewise erroneous.

1. Professor Emerson's qualifications as an expert were that he was a professor of law at Yale University and had made extensive studies in the field of civil liberties (R. 93-97). He testified that he had "concerned [himself] a good deal with the Committee on Un-American Activities" (R. 97). His attention was then directed to this Court's decision in *Barenblatt* v. *United States*, with which he stated he was familiar, and he was asked (R. 97):

> Have you an opinion as to the various considerations which have to be taken into account in balancing the competing public and private interests at stake in the circumstances here presented?

The government objected on the ground that the question sought testimony from the witness on a matter of law, not of fact: "The question invades the province of the Court. It is asking for an interpretation of existing cases, which it is for this Court to decide, not for the witness to decide, whether or not he is an expert." (Tr. 228).[3]

The trial court held that the question sought in effect an involved legal opinion (R. 98) and sustained the government's objection to its admission (R. 99). The court, however, permitted petitioner to put the testimony into the record as an "offer of proof" for purposes of appeal. Petitioner's counsel rephrased the question to insert the word "factual" before the word "considerations" (R. 99). The government

[3] "Tr. refers to the reporter's typewritten transcript of the trial proceedings.

again objected and the objection was sustained (R. 100).

Professor Emerson testified that the government's interest in seeking information from petitioner was to pass legislation protecting against overthrow of the government by force and violence (R. 100). He stated that in weighing this interest the court should consider six factors. First, present statutes (which he described) already performed this purpose. Second, the country was strong economically, politically, and socially. Prosperity, according to Professor Emerson, made an economic collapse unlikely; no strong radical groups existed which constituted a danger to internal security, particularly since there was no indication that the police or military were sympathetic to attempts to overthrow the government; and there was no serious social unrest (R. 103). Third, Professor Emerson testified, the Communist Party was extremely weak in 1958 both in numbers and positions of importance; security programs prevented the infiltration of government and industry; and Communist power in labor unions, religious and educational institutions, and the Negro community was extremely small (R. 103–106). The fourth factor in determining the government's interest was the activity of the A.F.L.–C.I.O. and other unions in preventing Communist infiltration of labor (R. 106–107). Fifth, Professor Emerson stated that the House Un-American Activities Committee, as shown by its reports, already "had taken substantial testimony on the questions that they addressed themselves to in the Gary proceedings" (R. 107). And, finally, the

Committee could obtain substantial information from voluntary witnesses (R. 108).

Professor Emerson then expressed his opinion concerning the factors which the district court should consider in determining the individuals' interest in refusing to testify. First, citing Milton, Jefferson, Mill, Chaffee, Holmes, Brandeis, and recent psychological studies, he testified that the "freedom of expression is essential to individual integrity and dignity" and to the right to develop and realize the individual's potentialities (R. 108). Second, the witness said, the right of silence "recognized in the classic flag salute case" "is particularly important in modern society where so many pressures tend toward conformity" (R. 109). And, third, the individual has the right of association which "is based on the weakness of the individual as a single person to accomplish political or social change" (R. 109). Professor Emerson emphasized that society, as well as the individual, has an important interest in freedom of expression since it "is a basic and absolutely fundamental principle of the democratic process" (R. 109). He described the serious effect on the individual's interest from Congressional investigation of beliefs and associations: the mere questioning of the witness inhibits him from freely expressing himself; economic harm often results such as the loss of employment; and the witness is often socially ostracized (R. 110–111). In addition, other people besides the witness become afraid to engage in similar political activity and associations (R. 111). These effects are not confined, according to Professor Emerson, to the Communist

Party since it is impossible to draw any clear line; the "whole area left of center * * * becomes smeared * * * with the same color" (R. 111–112).

Finally, Professor Emerson stated that he thought that the forces in this country tending toward a closed society restricting independent thinking and activity were now stronger than those supporting an open society (R. 113). In support of this judgment, he noted the great number of government employees subject to loyalty tests, the large units which dominate the economy, and the unanimity of opinion expressed by mass media and educational institutions (R. 113–114). He therefore stated that "as of this time what is needed, in terms of freedom of expression, is that society encourage independence, unorthodoxy and differences * * *" (R. 114).

Professor Emerson concluded (R. 115):

> My answer is, on the basis of the foregoing considerations, it is my opinion that the interests of the Government in obtaining answers to the questions put to this defendant as an aid in developing further legislation to protect internal security are substantially outweighed by the interest of the individual in freedom of speech or silence, as he may prefer, and by the interest of the community in maintaining freedom of political expression and other conditions essential to maintaining an open society.

After hearing Professor Emerson's testimony, the government renewed the objection to its admission, on the same grounds as previously stated (R. 115).

In finally excluding the proffered testimony, the trial court said (R. 116):

> [I]t seems to me that expert testimony of this kind is not material in that it is not a question of fact as to what elements go to make up the balance of interests, public and private, but a legal matter, which is within the province of the Court to decide; and it is not a subject of expert testimony.

2. Petitioner's contention that the trial court's refusal to allow the introduction of Professor Emerson's testimony was reversible error is without merit for at least two reasons. First, we submit that, as the two courts below held, the testimony was not properly admissible. It consisted principally of arguments concerning what legal factors the court should consider and what weight should be given to each of these factors, not with factual evidence relating to the factors which the court might consider. Thus, Professor Emerson's statement, coming at the close of petitioner's case, reads like the closing argument of able counsel summarizing his client's legal position under the First Amendment. While such a statement could be properly presented by petitioner's counsel as legal argument, the trial court correctly held that it was not evidence.

Second, even if Professor Emerson's testimony were properly admissible, we submit that petitioner's conviction should nevertheless be sustained. This testimony was offered solely in relation to petitioner's claims under the First Amendment. The issue whether a witness' rights under the First Amendment

have been violated by a Congressional committee is, as the *Barenblatt, Wilkinson,* and *Braden* cases plainly show, a question of law. Therefore, this Court can consider Professor Emerson's testimony which is fully set forth in the record—in determining petitioner's First Amendment claims (assuming contrary to our contentions above, that the testimony is admissible for this purpose).

There is no need for the district court to make the initial determination of the issue whether petitioner's First Amendment rights have been violated on the basis of the record including Professor Emerson's testimony. Not only is the issue, as stated above, a question of law, but we think its resolution is perfectly clear. Professor Emerson's testimony gave no new legal or factual considerations which were not considered by this Court in *Barenblatt.* There the Court relied heavily on numerous earlier decisions which described the serious danger to the country arising from Communist activities (360 U.S. at 127–129).* *E.g., American Communications Ass'n* v. *Douds,* 339 U.S. 382, 388–389; *Dennis* v. *United States,* 341 U.S. 494, 498; *Carlson* v. *Landon,* 342 U.S. 524, 535–536; see Subversive Activities Control Act of 1950, Title I, § 2, 64 Stat. 987–989. On the other hand, Mr. Justice Black, in dissenting in *Barenblatt,* emphasized the interest "in being able to join organizations, advocate

* The Court also noted, in weighing the government's interest, the valid legislative purpose of the committee, the relevancy of the questions asked the witness, and the lack of any indication that the committee was trying to pillory the witness or was using dragnet procedures (360 U.S. at 132–134) (see *supra*, pp. 23–24).

causes and make political 'mistakes' " and contended that the interest of the government in "self-preservation" was "vastly overstated" (360 U.S. at 144). Professor Emerson's testimony added little to these basic contentions except to spell out the competing considerations in greater detail. Thus, he presented no evidence which could change the Court's determination in *Barenblatt*, *Wilkinson*, and *Braden* that Congressional committees can compel witnesses to testify concerning their Communist activities without violating the First Amendment. And, as we have shown earlier (pp. 23–24), the particular circumstances of this case are even stronger in favor of the governmental as opposed to the private interests than in those three cases.

II

THE STATUTE UNDER WHICH PETITIONER WAS CONVICTED IS NOT UNCONSTITUTIONALLY VAGUE

Petitioner contends (Pet. Br. 30–32) that the statute under which he was convicted, *i.e.*, House Rule XI, the Committee's authorizing resolution, was unconstitutionally vague. In fact, however, the petitioner was convicted of violating 2 U.S.C. 192 (see Pet. Br. 3), the contempt-of-Congress statute, which is perfectly clear. Convictions under this statute have been repeatedly upheld by this Court, as in the *Barenblatt*, *Wilkinson*, and *Braden* cases.

Petitioner's argument is therefore not aimed at the statute under which he was convicted, but rather at the resolution of the House of Representatives authorizing the Committee to conduct investigations of Communist activities. Rule XI, Rules of the

House of Representatives, 60 Stat. 823, 828 (see Pet. Br. 3). Rule XI, however, is not a criminal statute; it does not prohibit or punish any conduct. Instead, it merely confers authority on the Committee to conduct investigations within a particular area. Thus, the rules for construing criminal statutes do not apply to the construction of Rule XI.

Petitioner, however, claims (Pet. Br. 30) that this Court held in *Watkins* v. *United States*, 354 U.S. 178, 208, and *Sacher* v. *United States*, 356 U.S. 576, 577, that Rule XI must be treated as a criminal statute. Those cases state only the proposition, to which we of course agree, that "the courts must accord to the defendants [under 2 U.S.C. 192] every right which is guaranteed to defendants in all other criminal cases." 354 U.S. at 208. The Court then went on in *Watkins* and *Sacher* to require that the Congressional committee explain to the witness, upon proper objection, the pertinency of its questions to the subject under inquiry. But, as the Court expressly said in *Watkins*, the subject under inquiry could be made clear to the witness not merely by the committee's authorizing resolution, but also by the resolution of the committee authorizing the particular hearings, the opening statement of the committee chairman, the testimony of other witnesses who appear at the hearings and statements made by the committee to them, and statements made by the committee to the particular witness himself. 354 U.S. at 209–214. Thus

[1] The *Sacher* case actually involved the Senate Internal Security Subcommittee, which, of course, has a different authorizing resolution.

in *Barenblatt*, the Court relied on the opening statement of the chairman and testimony by other witnesses to show the subject under inquiry. 360 U.S. at 124–125. Rule XI was considered in *Barenblatt* only in order to determine whether the committee was authorized by the House of Representatives to conduct the investigation. In none of contempt-of-Congress cases has the Court considered Rule XI as part of a criminal statute under which the witness was convicted.

It is thus clear that the government is required to rely on Rule XI only to show that the Committee was authorized by Congress to investigate Communist activity in basic industry. This Court has specifically held that Rule XI is sufficiently clear to give the Committee authority to investigate Communist activities. In *Barenblatt*, the Court stated (360 U.S. at 117):

> Petitioner also contends * * * that the vagueness of Rule XI deprived the Subcommittee of the right to compel testimony in this investigation into Communist activity. We cannot agree with this contention, which in its furthest reach would mean that the House Un-American Activities Committee under its existing authority has no right to compel testimony in any circumstances.

After an extensive discussion of the history of Rule XI, the Court concluded that "the Rule cannot be said to be constitutionally infirm on the score of vagueness" (360 U.S. at 122–123). Similarly, in *Braden*, this Court rejected the petitioner's contention that Rule XI was "fatally vague"[*] by holding that Rule XI properly authorized the investigation,

[*] See the petitioner's brief in No. 54, Oct. Term 1960, pp. 40–42.

365 U.S. at 433; see also *Wilkinson* v. *United States*, 365 U.S. 399, 409.

In all three of these cases, this Court upheld convictions under 2 U.S.C. 192 for refusal to answer questions asked by this very same Committee pursuant to the authority given it by the House of Representatives in Rule XI. Rule XI was sufficiently clear to sustain a conviction in those cases; it is equally sufficient, under the same circumstances, to sustain petitioner's conviction here.

III

THE COMMITTEE'S RULES DID NOT REQUIRE THE COMMITTEE TO GRANT PETITIONER'S REQUEST TO APPEAR AT AN EXECUTIVE SESSION

Petitioner argues (Pet. Br. 26–29) that the Committee's failure to allow him to appear at an executive session, instead of at the public hearings, violated its rules, and so excused his refusal to answer questions in the public session. This argument, too, is without merit.

Although petitioner was served with the Committee's subpoena on January 23, 1958 (Gov. Ex. 2, p. 2), he did not ask the Committee to appear at an executive session until February 6, 1958, the Thursday preceding the Monday on which he appeared as a witness. On that date, he sent a telegram which was addressed to the Committee counsel, not to the Committee or its chairman (R. 284a), which stated (Def. Ex. 1):

> Undersigned represents Edward Yellin and Nicholas Busic. On their behalf I request executive session in lieu of open session. Testimony needed for legislative purposes can be secured

in executive session without exposing witnesses to publicity.

Since the telegram arrived in Washington after the Committee chairman and counsel had left for Gary, Indiana, to conduct the hearings (R. 37, 39). it was answered by the Committee staff director, who denied the request (Def. Ex. 2). The record shows that the staff director had no authority to act on petitioner's request (R. 286a).

Petitioner relies on Rule IV–A of the Rules of Procedure of the House Committee on Un-American Activities as requiring the Committee to grant his request for an executive session. Rule IV–A states:

> If a majority of the Committee or Subcommittee, duly appointed as provided by the rules of the House of Representatives, believes that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation, or the reputation of other individuals, the committee shall interrogate such witness in an executive session for the purpose of determining the necessity or advisability of conducting such interrogation thereafter in a public hearing.

Rule IV–A does not give a witness a right upon request to an executive session whenever specified circumstances are present so that the Committee's refusal to provide this right is reviewable in the courts. Instead, the rule leaves it to a majority of the Committee, or subcommittee, to decide whether to interrogate the witness in executive session. Thus, the rule provides that a witness be questioned in executive session whenever "a majority of the Committee * * *

believes that the interrogation of a witness in a public hearing might * * * unjustly injure his reputation * * *" (emphasis added). This language gives the Committee discretion whether to hear a witness in executive session.

Here, the Committee decided not to have petitioner testify at an executive session even though it did not know that petitioner had requested such an appearance. Congressman Walter testified that "the Committee * * * passed on the question of whether or not we would hear Mr. Yellin at a session when the purpose of calling him was discussed, and it was decided then that the rule with respect to an executive session was not applicable * * *" (R. 70).

We have emphasized that Rule IV–A confers no right on petitioner to have this determination reviewed by the courts. Even if Rule IV–A did implicitly provide for a right of review, it is clear than a Congressional committee has broad discretion in determining its own procedure upon such questions as whether to hear a witness in an executive or public session. There is nothing in this record to suggest that the Committee abused its discretion in this case.[9]

[9] Petitioner also suggests (Pet. Br. 27, footnote) that Rule XI(m) of the House Rules gave him the right to appear in executive session. The language of this provision indicates that it was intended to protect persons other than the witness himself from being injured since it allows the injured person "an opportunity voluntarily to appear as a witness * * *." As the Committee counsel testified at the petitioner's trial (R. 88–90), this was the Committee's interpretation of the Rule. Moreover, Rule XI(m), like Rule IV–A of the Committee's own rules, confers no right on anyone to appear in executive session unless the Congressional committee so determines—a determination which was not made in this case.

IV

THE QUESTIONS WHICH WERE THE BASIS FOR COUNTS 2 AND 4 WERE NOT TOO VAGUE TO SUPPORT THE INDICTMENT

Petitioner claims (Pet. Br. 32–34) that the questions contained in Counts 2 and 4 are too vague to satisfy the Sixth Amendment and Rule 7(c) of the Federal Rules of Criminal Procedure, which require "that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation." The question involved in Count 2 was: "Will you tell the Committee, please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1957?" The question involved in Count 4 was: "Will you tell the Committee whether or not in 1957 there were present in any of the steel unions at Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party?"

Petitioner specifically does not question the fact that he understood the meaning of these questions. Rather, he states that "[t]he issue was not whether he understood the question, but whether the indictment met the requirements of the Sixth Amendment and of Rule 7(c) of the Rules of Criminal Procedure" (Pet. Br. 33).

A. First, petitioner is precluded from raising this issue because it was not presented—or even suggested—in his petition for a writ of certiorari. Therefore, under Rule 40(1)(d)(2) of the Rules of this Court, he cannot raise it in his brief on the merits.

unless there was "plain error." *E.g., Kessler* v. *Strecker,* 307 U.S. 22, 34.

B. In any event, petitioner's contention is clearly without merit. The Sixth Amendment and Rule 7(c) require that "[t]he indictment * * * be a plain, concise and definite written statement of the essential facts constituting the offense charged" (Rule 7(c)), so that the accused can adequately defend himself and can plead a conviction or acquittal in bar of a subsequent prosecution for the same offense. *E.g., United States* v. *Debrow,* 346 U.S. 374, 377–378. The indictment set out clearly the Committee's investigative authority, the subject under inquiry, the facts concerning the hearing, the subpoenaing of petitioner, his appearance, and his wilful refusal to answer five pertinent questions, each of which was quoted (R. 1–3). Thus, whether or not the questions themselves were vague, these allegations clearly and sufficiently allege that petitioner violated 2 U.S.C. 192 by wilfully refusing to answer pertinent questions asked by a Congressional committee. The fact that the indictment did not spell out the meaning of the questions did not prejudice petitioner either in preparing his defense or by allowing the possibility of a new prosecution for the same offense.

As to preparing his defense, it would not have helped petitioner to have the indictment specify the meaning of the questions. The charge was that he had refused to answer the questions. The only possible defense which could turn upon their meaning is that petitioner refused to answer the questions because he did not understand them. But that defense

depends on whether petitioner understood their meaning when he appeared before the Committee; if he did not understand the questions at that time, it would do no good to acquaint him of their meaning in the indictment.[10] As to a second prosecution, the indictment specified the Committee holding the hearing, the time of the hearing, and the questions petitioner refused to answer. There was no possibility of a second prosecution for petitioner's refusal to answer these same questions.

The indictment was not required to detail the meaning of the questions which petitioner refused to answer either by describing their context in the hearing or by defining the various words which were used. Frequently, questions standing alone are vague and ambiguous. For example, in the *Barenblatt* case, this Court upheld the conviction of a witness for refusing to answer the question, "Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?" (360 U.S. at 114). The indictment never described the Haldane Club or its exact connection with the Communist Party. A requirement that such questions be explained in the indictment would be contrary to the language and purpose of Rule 7(c) that the indictment be a concise statement of the essential facts. The meaning of the question is not an essential element of the crime of contempt; it is the wilful refusal to answer which constitutes the crime.

[10] We show below (pp. 42–45) that petitioner did understand the questions at the time he refused to answer them and that, in any event, this defense is not open to him since he did not claim that the questions were vague at that time.

C. It is apparent, despite the denial in his brief, that petitioner's real contention is that the questions did not adequately apprise him of the information sought by the Committee and that therefore he cannot be convicted of contempt. We agree that a witness before a Congressional committee cannot be convicted of *wilfully* refusing to answer questions asked by a Congressional committee if the witness informs the Committee that he cannot understand what information the Committee is seeking and the Committee nevertheless fails to state or explain the questions with reasonable clarity. We emphasize, however, that the witness is required to object on the ground of vagueness at the time the questions are asked by the committee. Just as with regard to the pertinency of the questions to the subject under inquiry, the committee can easily explain the meaning of its questions if the witness is in doubt. Therefore, the issue of vagueness, like the issue whether the committee sufficiently apprises the witness of the pertinency of the questions, cannot be raised for the first time at trial. Cf. *Barenblatt* v. *United States*, *supra*, 360 U.S. at 123–124; *Deutch* v. *United States*, 367 U.S. 456, 469. Here, petitioner, although he made several objections to the questions he refused to answer, did not even indicate that he failed to understand them.

On the other hand, unlike the situation with regard to the issue of pertinency, we do not think that the government is required to prove the meaning of the questions at the witness' trial for contempt when he fails to raise the issue before the committee. In *Deutch*, this Court held, even though the pertinency

of the questions was not questioned at the hearing, that the government is required to prove pertinency at the trial. 367 U.S. 468. This holding was based entirely on the explicit requirement of 2 U.S.C. 192 that the questions be "pertinent to the question under inquiry." Since 2 U.S.C. 192 does not make the clarity of the question an element of the offense, we do not think that the government is required to prove it unless it was timely raised before the committee itself.

In any event, in this case, the meaning of the questions in Counts 2 and 4 was made clear to petitioner at the hearing and the introduction of the transcript of the hearing satisfied any burden the government may have had to show their meaning at petitioner's trial. The only possible vagueness in the two questions concerns the words "colonization" in Count 2 and "colonizer" in Count 4. Petitioner admitted that he was present while John Lautner, a long-time high official in the Communist Party, testified before the Committee (Hearings, p. 1976). During this testimony, the Party's colonization program was repeatedly described. Lautner testified that, after the 1945 reconstruction of the Party, a policy of colonization was begun (*id.* at pp. 1964–1965). He described as Party colonizers trained Party members who were assigned to organize Party activities in the steel industry in the Middle West (*id.* at pp. 1965–1966). Lautner further testified that after the 1948 Party convention one J. Peters "organized a number of classes for colonizing party members" and that in the spring of 1949 Party members, who had just graduated from college, be-

came colonizers in various industries (*id.* at p. 1967). At this point, Lautner defined a "colonizer" (*id.* at p. 1968):

> A colonized Communist is one who is a professional revolutionary, who has uprooted himself from his home environment and carried out a party instruction, one who may have had personal problems, family problems, but that was secondary. The first was the problem of the party, and he submitted himself to become a person who will solve for the party their problems and become a colonized Communist *to carry out Communist work in a basic industry.* [Emphasis added.]

Lautner said that colonizers get jobs in a major industry by misrepresenting their college education (*ibid.*). Subsequently, the counsel of the Committee summarized Lautner's testimony about Peters: "You told us about * * * classes that were conducted by J. Peters, training young men in the universities to go out and engage in colonization in industry" (*id.* at p. 1968). Lautner said that the Party believed that "the best way to get back into the main stream of labor would be to colonize capable Communist organizers in the basic industries * * *" (*id.* at p. 1971).

Before petitioner was finally ordered to answer the question involved in Count 2 concerning whether he knew of colonization by the Communist Party in steel unions in Gary, Indiana, prior to September 1957, the Party's program of colonization was explicitly described to him. The counsel of the Committee stated (Hearings, p. 1986):

> It has been testified here that colonization of young men in the middle of their educational courses in industry was a deep seated plan of the Communist Party to strengthen itself within basic industry.

After petitioner then told the Committee that he was present then Lautner testified, the Committee counsel said that "[t]he statement was made here of the practice of the Communist Party in colonizing industry at Flint, Michigan; at the University of Colorado, which is at Fort Collins, Colorado, where you now reside; and other places" (*ibid.*).

In short, we submit that the record of the hearings shows that petitioner was fully acquainted with the claim as to the Party's colonization program in basic industries before he refused to answer the questions involved in Counts 2 and 4. He clearly knew that the Committee's questions sought to obtain information of Party organizing activities in the steel industry in Gary, Indiana.[11]

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[11] Even if, contrary to our contentions above, Counts 2 and 4 are invalid because of the vagueness of the questions, petitioner's conviction still must be affirmed. He received concurrent sentences on all four counts and therefore his conviction must be sustained if any one count is valid. *E.g.*, *Barenblatt* v. *United States*, 360 U.S. 109, 115.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court of appeals should be affirmed.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 3

EDWARD YELLIN,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 477

EDWARD YELLIN,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

I.

We evidently failed in Point I of our orginal brief to state our argument with clarity since the Government has misunderstood it. Thus, the Government at pages 22-26 of its brief, spends much time in refuting contentions that were never made. We did not, in our Point I, contend that the Committee had no proper legislative purpose (but see Point V of petitioner's original brief), or that non-pertinent questions were asked, or that petitioner was not allowed to state his objections, or that the Committee had resorted to "indiscriminate dragnet procedures." Neither did we

urge that the conviction should be reversed merely because the information sought of petitioner was cumulative, or because the Committee already had the information it sought of petitioner. We know that cumulative or corroborative evidence may sometimes be of slight value in some circumstances. Our argument was of quite a different order and we shall seek to restate it.

It can hardly be doubted that the freedoms protected by the Bill of Rights are the cornerstone of our democratic form of government and that the First Amendment in particular sets forth the essence of our democratic rights. It would be presumptuous for us to call to the attention of this Court the many decisions which have so held. The stirring language of Mr. Justice Jackson in *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624 will not be forgotten so long as our democratic form of government survives. This Court has been similarly eloquent in many other cases. See, for example, *Whitney* v. *California*, 274 U.S. 357, 372 (Brandeis, *J.*, concurring); *Stromberg* v. *California*, 283 U.S. 359; *De Jonge* v. *Oregon*, 299 U.S. 353; *Thornhill* v. *Alabama*, 310 U.S. 88; *Bridges* v. *California*, 314 U.S. 252; *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Thomas* v. *Collins*, 323 U.S. 516; *United States* v. *C.I.O.*, 335 U.S. 106, 129 (Rutledge, *J.*, concurring) and many others.

Recently this Court has held, we think unfortunately, that the individual's right to speak his mind, his right of free association, his right to remain silent, may be disregarded in some circumstances. Similarly, the right of society to hear great issues debated, to enjoy the benefits of a free exchange in the market place of ideas may sometimes be denied. That such limitation on First Amendment rights threatens the existence of a democratic society can

hardly be doubted. And once this Court held that only a clear and present danger can justify such conduct.*

But more recently the Court has held that these fundamental rights may be invaded under less pressing circumstances and that it is appropriate for the courts to determine the "weight to be ascribed to the interest of Congress" in interrogating witnesses and to balance this interest against competing interests (*Barenblatt* v. *United States*, 360 U.S. 109, 126). We accept this decision, albeit reluctantly, at least until the Court shall reconsider the matter.

This, however, is not the end but the beginning of our inquiry. For certainly the Court did not intend to hold that these great pillars of our democracy could be breached by *any* congressional committee which asks *any* relevant question about *any* subject of legislative inquiry. We know the contrary is true. *Bates* v. *City of Little Rock*, 361 U.S. 512; *Shelton* v. *Tucker*, 364 U.S. 479.

We must assume that First Amendment rights weigh heavily in the scales, both for the benefit of the individual and for the benefit of society. Hence, if congressional

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* It may not be fashionable, but we think it still worthwhile to call to the attention of this Court language it once used in describing the meaning of the clear and present danger rule.

> "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished. These cases do not purport to mark the furthermost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights. For the First Amendment does not speak equivocally. It prohibits any law 'abridging the freedom of speech, or of the press.' It must be taken as a command of the broadest scope that explicit language, read in the context of a libel-loving society, will allow." (*Bridges* v. *California*, 314 U.S. 252, at 263.)

interrogation is to be permitted in these areas, it must present even more weighty interests. It is in this connection that the cumulative nature of the inquiry by the Committee becomes important and that we must determine whether the questions asked are not merely corroborative of other material in the possession of the Committee. Because, while such questions may be relevant and admissible in an evidentiary sense, certainly not much weight can be ascribed to them. The Government does not contend that the information it sought of petitioner was other than cumulative or corroborative of other testimony it had received. To treat such trivia as sufficient to outweigh the public and private interests described by this Court in *Watkins* v. *United States*, 354 U.S. 176, at 197-200, and *Sweezy* v. *New Hampshire*, 354 U.S. 234, at 248-250 and 261-267, is to make of the protection offered by the First Amendment a hollow promise. We cannot believe such was the intent of this Court when it first held that the clear and present danger test could be replaced by the balancing concept which now pervades its decisions.

It is from this point of view, therefore, that we urged once again that the questions on the basis of which petitioner was convicted were trivial matters, that the answers could not in any realistic sense affect the security of our country and that they could not have served so valuable a legislative purpose that Congress might invade First Amendment rights in order to secure them.

It is in this connection likewise that we offered the testimony of Professor Emerson. At page 32 of its brief, the Government concedes that Professor Emerson's testimony provided factual considerations appropriate for the Court. It may be true, as the Government points out at that point, that Professor Emerson's conclusions were contrary to the conclusions relied upon by the Court, in

American Communications Association v. *Douds*, 339 U.S. 382; *Dennis* v. *United States*, 341 U.S. 494; and *Carlson* v. *Landon*, 342 U.S. 524. It may also be true that his testimony was contrary to the findings of Congress as set forth in the Subversive Activities Control Act of 1950, 64 Stat. 987. However, it is our understanding that the purpose of a trial is to determine disputed issues of fact. Indeed, Professor Emerson's testimony is admissible precisely because it challenges the facts which this Court accepted in other cases, especially because in none of those cases, as far as we know, was evidence presented to support the findings of fact on which the Court relied. In those cases, this Court took judicial notice of certain facts, based on purported congressional findings and on the general knowledge of the Justices of this Court. Certainly, it lies in the power of a defendant in a criminal case to prove that the factual assumptions upon which the Court and Congress proceeded are in fact incorrect.

II.

In Point II of petitioner's brief, we argued that the Committee violated its own rules in failing to consider petitioner's request for an executive session. For the most part, we think that the issue is sufficiently drawn so as to make it unnecessary to reply except for one slight respect in which we think the Government has mistaken the record. At page 38 of its brief, the Government notes that Congressman Walter testified that the Committee had passed on the question of whether or not it would hear petitioner in executive session. As often happens, petitioner and the Government have each quoted a different portions of a witness' answer, with the result that the context in which the answer is given becomes clouded. So that the Court may more clearly see this context, we quote at some length:

"Q. . . . Wasn't it possible for the Committee to hear Mr. Yellin in executive session at that time?

A. Well, the Committee already passed on the question of whether or not we would hear Mr. Yellin at a session when the purpose of calling him was discussed, and it was decided then that the rule was respect to an executive session was not applicable because the investigator—and I might say it was Mr. Collins, a former F.B.I. agent, who developed this entire matter, and we were willing to accept his story with respect to the proposed testimony.

Q. And what was his story?

A. Well, his story was that the man was a known Communist; that he had been active in the international conspiracy, and that he had deceived his employer; and, furthermore, he came within the category of those people that we were experiencing a great deal of difficulty in finding out about with respect to the colonization.

Q. Did you assume, from Mr. Collins' report, that Mr. Yellin would be a witness who would refuse to give information to the Committee?

A. We had no way of knowing.

Q. Well, what conclusions did you draw from the report of Mr. Collins which you have just related?

A. We concluded that this would be a fine witness for the Committee in support of proposed legislation having to do with colonization, and, two, having to do with the protection of our defense efforts. And it is always worth a chance that somebody will testify.

Q. But it wasn't worth the chance of calling him in executive session, to see what his position would have been?

A. I am sure that had you communicated this whole matter to the Committee before we left Washington

so that we could have given it due consideration—we would have, and always do—we might have a different situation today" (R. 70).

Congressman Walter here makes it perfectly clear that the Committee, in deciding not to hold an executive session, was violating its own rules. The rules provide that an executive session is to be granted when "the interrogation of a witness in a public hearing might . . . unjustly injure his reputation." The Committee applied a completely different test as the testimony quoted shows.

Respectfully submitted,

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March, 1962.

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 35

EDWARD YELLIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES ON REARGUMENT[1]

OPINION BELOW

The opinion of the court of appeals is reported at 287 F. 2d 292.

JURISDICTION

The judgment of the court of appeals was entered on February 16, 1961, and a petition for rehearing was denied on April 3, 1961. On April 21, 1961, Mr. Justice Black extended the time to file the petition for a writ of certiorari to and including June 2, 1961. The petition was filed on May 31, 1961 and certiorari was granted on October 9, 1961 (368 U.S.

[1] This brief replaces the original brief on the merits filed by the United States.

816; R. 229). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the questioning of petitioner by the House Un-American Activities Committee concerning his membership in the Communist Party and the Party's program of "colonization" of the steel industry was pursuant to a valid legislative purpose and consistent with petitioner's rights under the First Amendment.

2. Whether the trial court erred in excluding expert testimony on the factors which should be considered by the court in determining petitioner's rights under the First Amendment.

3. Whether petitioner was convicted under a statute which is unconstitutionally vague.

4. Whether the Committee violated its own rules in refusing to question petitioner in executive session.

STATUTES AND RULES INVOLVED

Section 192 of Title 2, U.S.C. (R.S. 102, as amended) and the pertinent portions of Rule XI of the House of Representatives and of the Rules of the Committee on Un-American Activities are set forth in petitioner's brief at pages 3–4.

STATEMENT

Petitioner was charged in a five-count indictment with having refused, in violation of 2 U.S.C. 192, to answer questions pertinent to the matter under inquiry asked him by the Committee on Un-American Activities of the House of Representatives. Count 5 was dismissed on motion of the government (R. 11).

Upon a trial without a jury, the court found petitioner guilty as charged in Counts 1, 2, 3, and 4. The court imposed a sentence of one year on each count, the sentences to run concurrently, and a fine of $250 (R. 116–118). The court of appeals affirmed the conviction. This Court granted certiorari (368 U.S. 816; R. 299); and after briefing and oral argument, the Court set the case for reargument (370 U.S. 931).

The pertinent facts may be summarized as follows:

1. The Committee on Un-American Activities passed a resolution on January 15, 1958, providing that hearings would be held in Gary, Indiana, to inquire into (Hearings,[2] p. 1956):

> 1. The extent, character, and objects of Communist infiltration and Communist Party propaganda activities in basic industry in the Gary, Indiana, area, the legislative purpose being to obtain additional information for use by the Committee in its consideration of Section 16 of H.R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and willfully becoming or remaining a member of the Communist Party with knowledge of the purpose or objective thereof; and for the additional legislative purposes of adding to the Committee's overall knowledge on the subject, so that Congress may be kept informed

[2] Hearings before the Committee on Un-American Activities, House of Representatives, 85th Cong., 2d Sess., entitled "Investigation of Communist Infiltration and Propaganda Activities in Basic Industry (Gary, Ind., Area)." This document, which is hereinafter referred to as "Hearings," constitutes Gov. Ex. 15.

and thus prepared to enact remedial legislation in the national defense and for internal security when and if the exigencies of the situation require it.

2. Execution by administrative agencies concerned of Public Law 637, of the 83rd Congress known as the "Communist Control Act of 1954", relating to the eligibility to exercise the rights and privileges provided under the National Labor Relations Act of labor organizations determined by the Subversive Activities Control Board to be Communist-infiltrated organizations. The legislative purpose is to assist Congress in appraising the administration of the Communist Control Act of 1954 and to enact such amendments thereto as the exigencies of the situation require.

3. Any other matter within the jurisdiction of the Committee which it or any subcommittee thereof, appointed to conduct this hearing, may designate.

Petitioner was subpoenaed to appear at the hearings in Gary on February 10, 1958. His counsel sent a telegram to the Committee's counsel on February 6, 1958, asking that petitioner be questioned in executive session because "[t]estimony needed for legislative purposes can be secured in executive session without exposing witnesses to publicity" (Def. Ex. 1). On that same date, the Staff Director of the Committee telegraphed petitioner denying the request (Def. Ex. 2).

Public hearings were held in Gary, Indiana, by a subcommittee on February 10 and 11, 1958. At the opening of the hearing on February 10, the chairman

of the Committee, in petitioner's presence (Hearings, p. 1977), read the above-quoted resolution of the Committee authorizing the hearings and explained at length the purpose of the hearings in Gary (*id.* at 1955–1957). The chairman stated, *inter alia*, that the subcommittee was "in Gary for the purpose of receiving testimony concerning Communist techniques and tactics of infiltration and the extent, character, and objects of Communist Party propaganda activities in basic industries"; that such an inquiry had great importance to internal security; that the hearing was intended as part of the Committee's "surveillance over existing security legislation," including the Internal Security Act, the Foreign Agents Registration Act, the Communist Control Act, and various espionage statutes "for the purpose of recommending any needed legislative amendments"; and that the Committee hoped to secure information useful in its consideration of H.R. 9352, an omnibus bill to amend the Internal Security Act of 1950, which was pending before it (*id.* at pp. 1956–1957).

Petitioner was present (Hearings, p. 1976) at the time John Lautner, the first witness at the hearing, testified (*id.* at pp. 1958–1974). Mr. Lautner, who was an organizer and high functionary in the Communist Party from 1930 to 1950, testified that in 1945 the Party condemned the "revisionist" policies which it had followed under its former leader, Earl Browder, and returned to the basic principles of Marxism-Leninism; that, after the Party was reconstituted, it re-established its policy of concentration

in basic industry; that as a result of this policy "colonization" was begun and Party "colonizers" were sent to all parts of the country to coordinate Party work in basic industries including the steel industry (*id.* at pp. 1964–1965); and that these colonizers were generally young Party members from colleges and universities who left to become "professional revolutionaries" (*id.* at p. 1967). Mr. Lautner further testified that (*id.* at p. 1968):

> Lenin said:
>
> > "It is necessary to be able to withstand all this, to agree to any and every sacrifice, and even—if need be—to resort to all sorts of devices, manoeuvres, and illegal methods, to evasion and subterfuge, in order to penetrate into the trade unions, to remain in them, and to carry on Communist work in them at all costs."
>
> This is the underlying principle on the basis of which these people [the colonizers] will deny their name, will deny their education, will deny everything, because that denial furthers the aims and objectives of the Communist Party. It would be a liability for him to be a worker in the mill if he has a college degree; it wouldn't look good. There would be immediately a suspicion of an ulterior motive in that, so they are carrying out a Leninist policy when they do that.

Petitioner, the second witness appearing on February 10, was questioned immediately after Lautner (Hearings, pp. 1974–1988). Petitioner answered preliminary questions as to his name and present residence. When the Committee chairman refused to

allow petitioner's counsel to read into the record the telegrams between himself and the Committee, petitioner's cousel stated that he would be satisfied if the record showed that the exchange of telegrams had occurred (*id.* at p. 1974). Petitioner then refused to answer the question, "Where did you reside prior to September, 1957?" (Count 1) (*id.* at pp. 1974–1975). He stated as his grounds for refusing to answer that the First Amendment forbids Congress to investigate opinions and beliefs; that the authorizing resolution of the Committee is so vague that it might deprive him of due process of law; and that the question was not pertinent to any legislation (*id.* at pp. 1976–1977). After petitioner was directed to answer the question, he explicitly stated that he relied on the First Amendment and not the privilege against self-incrimination (*id.* at p. 1977). Apparently in doubt whether petitioner was challenging the pertinency of the question to the subject under inquiry, the committee counsel ascertained that petitioner was present when the chairman made his opening statement which explained the purpose of the hearing and then stated (*id.* at p. 1977):

> This is a hearing which involves a subject described by the chairman, and it relates to Communist Party activities within the area of Gary. As far as pertinency of the question is concerned, as to which you seem to express some doubt, it would be impossible for us to learn anything from you regarding Communist Party activities in this area without ascertaining whether or not you were here for a period of time.

Petitioner then was again directed to answer the question and he again refused (*id.* at p. 1978).

Petitioner next was asked to state his formal education. He refused to answer because the question could serve no legislative purpose and violated his First Amendment rights (Hearings, p. 1978). When asked whether he was a student at the College of the City of New York for several years prior to 1948 he invoked the same grounds and said (*ibid.*):

> [I]f the committee knows all these things, I can't see the purpose or the pertinency of asking me what they consider a known fact. Furthermore, it kind of appears to me as if this line of questioning is merely trying to create an impression and expose me for the sake of merely exposing me and not leading to any valid legislative purpose.

The Committee chairman then assured petitioner that it was not the purpose of the question to expose him.

The Committee received in evidence copies of petitioner's college record showing that he transferred from the College of the City of New York to the University of Michigan and from the College of Literature, Science and Arts at the University of Michigan to its Engineering Department in 1948 (Hearings, pp. 1979, 1980–1981); it also received in evidence petitioner's application for employment at the Carnegie-Illinois Steel Corporation dated June 23, 1949, which left blank the line asking for the applicant's college education (*id.* at pp. 1982, 1983–1984). Petitioner refused to answer whether his name was at the bottom of the latter application, where he was residing on June 23, 1949, whether

he lived at a specified address in Gary at that time (as the application for employment said), whether he was ever employed at the Reo Motor Company in Lansing, Michigan (the application stated that petitioner had been employed at Reo from 1946 to February 1948), whether he had been employed by Modern Distributors from February 1948 to April 1948 (as the employment application showed despite the statement in the University of Michigan records that he was at the University from February 1948 until June 1949), whether he was employed by Reo from April 1948 to May 1949 (as the employment application also said), why he had failed to include on his employment application his education at the College of the City of New York or the University of Michigan, and whether "at the time you sought that employment in Gary, Indiana, in steel, you were doing it at the instance or under counseling from the Communist Party or leaders in the Communist Party" (*id.* at pp. 1982–1985). Petitioner refused to answer all these questions for the same reasons he had earlier stated.

Petitioner was then asked, "Will you tell the committee please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1957?" (Count 2) (Hearings, p. 1985). When petitioner refused to answer for the same reasons, the Committee counsel again explained the pertinency of the question (*id.* at p. 1986):

> It has been testified here that colonization of young men in the middle of their educational

courses in industry was a deep-seated plan of the Communist Party to strengthen itself within basic industry. The chairman's opening statement indicated that the activities of the Communist Party within basic industries was the subject of inquiry here.

* * * * * *

The statement was made here of the practice of the Communist Party in colonizing industry at Flint, Michigan; at the University of Colorado, which is at Fort Collins, Colorado, where you now reside; and other places.

In order to understand the full tactics of the Communist Party in its operations here in Gary, it is necessary the committee understand fully the extent of such practices, the full purposes of it, and the methods by which it is put into effect. That is the connective reasoning of the committee in asking the question.

On the grounds already stated, petitioner declined to answer whether he was a member of the Neafus Club of the Communist Party at the University of Michigan, whether he was acquainted with Francis X. T. Crowley at the University of Michigan, and whether Crowley was correct when he testified before the Committee in 1954 that petitioner has been a member with him of the Neafus Club (*id.* at p. 1987).

Petitioner refused, for the same reasons, to answer the question, "Were you a member of the Communist Party on the 23rd day of June, 1949, which is the date of application filed in your name for employment in Gary?" (Count 3) (Hearings, p. 1987). He similarly refused to answer whether he was active in the American Veterans Committee prior to June 1949, and

whether he was acquainted with Edward Shaffer of Pittsburgh. Petitioner was shown a copy of the *Detroit News* dated January 7, 1949, reporting that three students, including Edward Shaffer of Pittsburgh and petitioner, resigned from the University of Michigan Chapter of the American Veterans Committee after the Committee in its annual convention adopted a resolution calling for the ouster of members belonging to the Communist Party. Petitioner refused to answer whether this report was correct (*id.* at pp. 1987–1988). He then declined to answer, "Will you tell the committee whether or not in 1957 there were present in any of the steel unions at Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party" (Count 4) (*id.* at p. 1988). Finally, petitioner refused to answer three more questions: whether he was a member of the Communist Party in August 1957; what stand did the Party take in Gary regarding the acts of the Soviet Union in Hungary in 1956; and whether he was at the time of the hearing a member of the Communist Party (*ibid.*).

Later on February 10, the subcommittee heard the testimony of Joseph LaFleur, who worked in the steel industry in Gary and had joined the Communist Party at the request of the FBI. He discussed at length Communist activities in the Gary area and in the steel industry in particular. Mr. LaFleur described petitioner as one of several well-educated, young Party members who had come to Gary to help organize Party activities in the steel mills (Hearings, pp. 2016–2017). Subsequently, the Committee asked two other wit-

nesses who worked in the steel industry whether they were acquainted with petitioner. Both refused to answer this question, as well as numerous other questions concerning Communist activities, on the basis of the First Amendment (*id.* at pp. 2055, 2063).

2. At petitioner's trial, the government's sole witness was Frank S. Tavenner, counsel for the Committee, who was present at the Gary hearings and interrogated petitioner. He testified that the purpose of the hearings was "to find out how serious the Communist propaganda activities and infiltration were in basic industry, particularly with regard to the steel industry in this area" (R. 18); that the reason that the Committee wanted the information was that it had held a series of meetings on this subject in Baltimore, Youngstown, Ohio, and other places, and the Committee was of the opinion that it might be necessary to amend various acts of Congress to "tighten up laws with regard to Communist activities in this field" (R. 18); and that the Committee considered the steel industry to be the most important basic industry in the country, and Gary, Indiana, was one of the centers of the steel industry (R. 25).

Tavenner further testified that members of the Committee introduced several bills around the time of these hearings relating to the internal security field:

H.R. 2369, sponsored by Congressman Walter, the Chairman of the Committee and of the subcommittee holding the hearings in Gary, to redefine the term "organize" as used in the Smith Act so as to include continuing acts of organizing (R. 27);

The Defense Facilities Protection Act of 1959, introduced by Congressman Scherer (who was one of the members of the subcommittee holding the hearings in Gary), to permit the federal government to guard strategic defense facilities against espionage, sabotage, and other subversion (R. 23);

H.R. 9352, an omnibus bill introduced by Congressman Walter to amend the Internal Security Act of 1950 (Gov. Ex. 14; R. 23–24);

H.R. 8121, a bill to amend the Subversive Activities Control Act of 1950 by authorizing the Secretary of Defense to provide for a security program with respect to defense contractors and their employees (Gov. Ex. 18; R. 65).

Tavenner stated at the trial that prior to calling petitioner the Committee had information that petitioner was a member of the Communist Party while at the University of Michigan in 1949; that he had previously attended City College of New York; and that he had filed an application for employment in 1949 at the Carnegie-Illinois Steel Corporation in Gary, Indiana, in which he failed to set out his college and university education (R. 34–35). Tavenner testified that the Committee wanted to find out from petitioner what knowledge he had of the execution of the Communist Party's plan to colonize the steel industry (R. 35).

On cross-examination, Tavenner stated that it was the practice of the Committee to interview prospective witnesses before subpoenaing them "if there is any chance in the world of obtaining co-operation

from them" (R. 53). Petitioner was not interviewed since he was then in Denver. Tavenner admitted, however, that if petitioner had been in Gary, he probably would not have been interviewed, even though the Committee did not know whether he would cooperate, since the Committee had information that he was a member of the Communist Party (R. 53, 58, 62). Tavenner emphasized that the Committee subpoenaed petitioner to testify with the hope he would cooperate (R. 52–54) and inform the Committee whether he had concealed facts on his employment application "pursuant to a Communist Party plan to colonize [the steel] industry, and the extent to which that colonization was progressing" (R. 53). Tavenner explained that the Committee believed that petitioner had information which had not been presented by any of the witnesses at the Committee's previous hearings on the Party's industrial concentration program (R. 55):

> We knew nothing about the actual activities of the Communist Party in the steel plants in Indiana as of the time of this hearing, or shortly before. Mr. LaFleur, who did testify [at the Gary hearings], according to my recollection got out of the Communist Party in 1950.[3] This witness, Mr. Yellin, as to whom we had testimony by several people, had been a member of the Communist Party at Michigan University, and had left there and come down and taken employment in Gary.

[3] Joseph LaFleur testified that he left the Party in 1952 (Hearings, p. 2013).

Tavenner later testified (R. 57):

> Now, with that information relating to Mr. Yellin, we felt certain that Mr. Yellin was in a position, if he would do so, to tell this Committee a great many things regarding the plan of the Communist Party to infiltrate the steel industry here, and to building up the Communist Party from its grass roots level, and just what the Communist Party plans were to make these bright young men leaders who did this thing of colonizing.

Representative Walter, the chairman of the Committee and of the subcommittee that conducted the hearings in Gary, was called to testify by petitioner. Mr. Walter stated that he did not know of petitioner's telegram asking for an executive session until after the public hearing in Gary started, since it was not addressed to him and he had left Washington for Gary by the time the telegram arrived; that neither the Committee counsel, to whom the telegram was addressed, nor the Committee staff director, who sent the telegram refusing to hear petitioner in executive session, had the authority to pass on such a request (R. 68–69); that at the time petitioner's counsel attempted to introduce the telegrams at the hearings, "it was too late then to raise any question that might have been raised by the telegram" for "the Committee [had] already passed on the question of whether or not we would hear Mr. Yellin at a session when the purpose of calling him was discussed, and it was decided then that the rule with respect to an executive session was not applicable * * *" (R. 69–70). When asked what considerations the

Committee used in determining whether to hold an executive session, Congressman Walter testified (R. 82):

> This is usually done when the Committee is fearful lest a witness will mention the name of somebody against whom there is no sworn testimony, and in order to prevent the name of somebody being mentioned in public that we are not sure has been active in the conspiracy, at least that there isn't sworn testimony to that effect, we have an executive hearing.

As to the Committee's purpose in subpoenaing petitioner, Congressman Walter stated that "[we] concluded that this would be a fine witness for the Committee in support of proposed legislation having to do with colonization, and, two, having to do with the protection of our defense efforts. And it is always worth a chance that somebody will testify" (R. 70). While Congressman Walter admitted that many witnesses refuse to testify, "occasionally we are very pleasantly surprised by having somebody give us information that is of great value in the drafting of legislation" (R. 82).

Petitioner called Professor Thomas I. Emerson of Yale to testify as an expert on the factors which should be considered by the district court in balancing the public and private interests in order to determine whether petitioner's First Amendment rights had been violated. The court ruled that this testimony was not admissible because it was opinion evidence on questions of law (R. 98–100, 116). Professor Emerson's testimony was then heard as an offer of proof (R. 99–115).

SUMMARY OF ARGUMENT

I

The Committee's use of compulsory process to obtain testimony from petitioner in aid of its investigation of Communist activities in basic industry and particularly in the steel industry, in the Gary, Indiana, area was a valid exercise of Congressional power that did not violate the First Amendment. Petitioner's basic contentions on this point, as he himself admits, have been answered by this Court in *Barenblatt* v. *United States,* 360 U.S. 109, *Wilkinson* v. *United States,* 365 U.S. 399, and *Braden* v. *United States,* 365 U.S. 431. There, the Court held that, in circumstances comparable to the present case, Congressional investigation of Communist activities has a valid legislative purpose and committees conducting such investigations may compel witnesses to testify concerning their Commmunist activities without violating their rights under the First Amendment.

A. Congress has power to require testimony, not otherwise privileged, in aid of an investigation into any proper subject of Congressional legislation. This power was first exercised by Parliament, and was carried over to the colonial and then state legislatures. Congress has exercised the power since 1792, and this Court, beginning in *Anderson* v. *Dunn,* 6 Wheat. 204, has approved it.

B. Congress has found on the basis of detailed investigations, such as the one involved here, that a foreign government controls the world Communist movement; that it establishes organizations designed to overthrow existing governments by force if necessary and to establish in their place totalitarian dictatorships subservient to that foreign government; and that Communists seek to gain control of labor unions in order to use their power for conspiratorial purposes. On the basis that such findings were, at least, not unreasonable, this Court has upheld the constitutionality of Congressional legislation concerning Communist activities in labor unions (*American Communications Ass'n* v. *Douds*, 339 U.S. 382), as well as numerous additional statutes punishing or regulating Communist activities, against attack under the First Amendment and other provisions of the Constitution. These cases establish that legislation safeguarding the internal security against subversive activities by the Communist Party in the steel industry would be a proper subject of Congressional legislation under the power granted by Article 1, Section 8, of the Constitution. *A fortiori*, Congress could constitutionally investigate an area where legislative action would be proper.

C. The use of compulsory process to secure testimony from petitioner concerning Communist activities believed to endanger the internal security did not violate the First Amendment.

1. This Court, in *Barenblatt*, 360 U.S. at 127, 128, and *Uphaus* v. *Wyman*, 360 U.S. 72, 79, 80, emphasized that the governmental interest involved in investiga-

tions of Communist activities was "the right of self-preservation, the 'ultimate value of any society.'" In *Barenblatt, Braden,* and *Wilkinson,* that prerequisite was applied to uphold a Congressional investigation concerning the general nature of the Communist conspiracy as reflected in education and in propaganda. In this case, the governmental interest is manifestly stronger, for here the investigation was into Communist activity in the crucial area of the basic steel industry, in which political strikes or sabotage could seriously endanger the internal security.

2. There was every reason to believe that petitioner could furnish pertinent and valuable information. The Committee had information that he was a long-time Party member who had actively participated in the Party's organization of the steel industry. Moreover, it is beyond dispute that the questions petitioner refused to answer sought relevant information concerning the legislative purpose of the hearings. Indeed, one of the questions concerning petitioner's membership in the Communist Party at a particular time—which is in itself sufficient to sustain the conviction—was virtually identical to questions upheld by this Court in *Barenblatt, Wilkinson,* and *Braden.*

Petitioner contends that the Committee had no governmental interest in questioning him because it had all the information concerning Communist activities which petitioner could have supplied. Even if, however, the witness had no new information, there is a strong governmental interest in having the witness corroborate previous testimony—particularly since the existing evidence is in a controversial area and is

therefore likely to be challenged. In addition, while the Committee had conducted hearings on Communist activities in the steel industry in other localities, it had conducted no such investigation on the related, but distinct, subject of Communist activities in the steel industry in Gary, Indiana. There is no evidence in the record that petitioner could not have provided valuable information on this subject. Petitioner could not bind the Committee by his unilateral determination—made by comparing his own knowledge which he has not disclosed with the information possessed by the Committee—that he could supply no new information.

Finally, in this case, petitioner's claim of prejudice to fundamental freedom is considerably weaker than in *Barenblatt, Wilkinson,* and *Braden.* Those cases involved the sensitive areas of education, propaganda, and, according to the defendants, political opposition. Here, on the other hand, petitioner was called to testify concerning Communist infiltration of the critically important steel industry.

D. The Committee in this case clearly had a proper legislative purpose, *i. e.,* the investigation of Communist activities in the steel industry, and was not merely attempting exposure for the sake of exposure. The authorizing resolution and opening statement of the chairman specifically referred to legislation in that area which the Committee was considering. Moreover, this Court has repeatedly held that the courts have no power to inquire into the motives of committee members. But, even if this power existed—as the dissents in several cases have suggested—there is not the slightest indication in this record that the purpose of the Committee was to expose petitioner.

II

The trial court properly excluded the testimony of Professor Emerson concerning petitioner's claim that his rights under the First Amendment had been violated. The questions asked Professor Emerson sought his "opinion" "as to the various factual considerations which have to be taken into account in balancing the competing public and private interests at stake." Professor Emerson's answer principally described what legal factors the courts should consider and what weight should be given to each of these factors; it was not factual information for the court to consider. While this statement could properly be presented as legal argument, the trial court correctly held that it was not evidence.

Even if, however, Professor Emerson's statements were properly admissible, petitioner's conviction should still be sustained. The statement was offered solely in relation to the First Amendment issue, which was a question of law. Since the entire statement is in the record, it can properly be considered by this Court. Professor Emerson, however, added little to the basic contentions already considered by this Court in the *Barenblatt, Wilkinson,* and *Braden* cases. Therefore, we submit that here, as in those cases, the Congressional investigation of Communist activities did not violate the First Amendment.

III

Petitioner contends that the statute under which he was convicted is unconstitutionally vague. Peti-

tioner, however, was convicted of violating 2 U.S.C. 192, the contempt-of-Congress statute and this Court has repeatedly upheld convictions under that statute. The argument is in reality aimed, not at the statute under which petitioner was convicted, but at the House resolution authorizing the Committee. House Rule XI is, of course, not a criminal statute, and therefore this Court has never construed it as one. The Court has three times held that House Rule XI is sufficiently clear to authorize the Committee to compel testimony in an investigation into Communist activities. *Barenblatt* v. *United States, supra,* 360 U.S. at 117; *Wilkinson* v. *United States, supra,* 365 U.S. at 409; *Braden* v. *United States, supra,* 365 U.S. at 433.

IV

Rule IV–A of the Committee's rules did not require that petitioner's request to appear at an executive session be granted Rule IV–A provides that a witness may be heard in executive session whenever "a majority of the Committee * * * believes that the interrogation of a witness in a public hearing might * * * injure his reputation." Clearly, this rule does not give a witness a right, upon request, to appear at an executive session; instead, the rule leaves it to the discretion of a majority of the Committee whether to interrogate the witness in executive session. The evidence here showed that the Committee had considered the matter and decided that petitioner should not be called in executive session. Even if Rule IV implicitly provided for judicial review—which we do not

think it does—there is nothing in this record to suggest that the Committee abused its discretion.

V

Petitioner contends that the questions involved in Counts 2 and 4 are too vague to meet the requirements of the Sixth Amendment and Rule 7(c) of the Federal Rules of Civil Procedure. However, even if this contention were valid, the conviction must be sustained since petitioner was given concurrent sentences on all four counts. Morover, petitioner is precluded from raising this issue because it was not presented in his petition for a writ of certiorari. Rule 40(1)(d)(2) of the Rules of this Court.

In any event, the Sixth Amendment and Rule 7(c) require that "[t]he indictment * * * be a plain, concise and definite written statement of the essential facts constituting the offense charged" (Rule 7(c)), so that the accused can adequately defend himself and prevent a second prosecution for the same offense. The indictment clearly stated all the elements of the offense, including the questions which petitioner refused to answer. The fact that the indictment did not spell out the meaning of the questions did not prejudice petitioner since no possible defense turns on their meaning except that the reason petitioner had not answered the questions is that he did not understand them. But that issue—which petitioner specifically refuses to claim—depends on whether the witness understood the question at the time he refused to answer before the Committee; it would do no good, on that issue, to explain the question subsequently in the indictment.

ARGUMENT

Petitioner was convicted for refusing to answer four questions asked him by a Congressional committee during an investigation of Communist activities in basic industry, and particularly in the steel industry, in the Gary, Indiana, area.* Two of these questions—where he resided prior to September 1957 (Count 1), and whether he was a Party member on June 23, 1949 (Count 3)—concerned only his own Party activities. The other two questions—whether he knew of Party colonization in the steel unions in Gary before 1957 (Count 2) and whether there were Party colonizers in the steel unions in Gary in 1957 (Count 4)—concerned the Party activities of other persons but did not require the divulgence of their identity. Since petitioner was sentenced to serve concurrent terms of imprisonment and to pay a fine which was less than the maximum authorized by the statute under any one count, the judgment below must be affirmed if petitioner's refusal to answer any one of the questions was unlawful. *E.g., Barenblatt* v. *United States,* 360 U.S. 109, 115.

I

THE COMMITTEE'S USE OF COMPULSORY PROCESS TO OBTAIN TESTIMONY FROM PETITIONER IN AID OF ITS INVESTIGATION OF COMMUNIST ACTIVITY IN THE BASIC STEEL INDUSTRY WAS A VALID EXERCISE OF CONGRESSIONAL POWER THAT DID NOT VIOLATE THE FIRST AMENDMENT

In *Barenblatt* v. *United States,* 360 U.S. 109, this Court squarely held that the use of compulsory proc-

* The indictment contained five counts, but Count 5 was dismissed on motion of the government (R. 11).

ess in aid of Congresssional investigations of Communist activities in circumstances comparable to the present case has a valid legislative purpose, and that the use of compulsory process to require witnesses to give testimony concerning Communist activities in aid of such an investigation does not violate the First Amendment. The holding was reaffirmed in *Wilkinson* v. *United States*, 365 U.S. 399 and *Braden* v. *United States*, 365 U.S. 431. Petitioner himself admits (Pet. Br. 14–15, 34) that the case at bar is indistinguishable, and that the precedents cited therefore dispose of his basic contentions that the Committee's action violated rights under the First Amendment.

It is scarcely necessary to recall that the process of decision according to law depends in considerable measure upon the weight accorded to prior decisions made by the court of last resort after full argument and deliberation. The decisions in *Barenblatt*, *Wilkinson*, and *Braden* are neither sports nor outmoded precedents based upon conditions or factual assumptions that time has altered or disproved. The underlying principle, that Congress is exercising an inherent power to investigate, and does not violate the First Amendment in merely requiring a witness to testify concerning subversive Communist activities, is in keeping with the full sweep of our constitutional history; it is sustained, as we shall show, by a score of related precedents resting upon the same hypothesis concerning the nature of the Communist conspiracy. The specific rule in question was laid down after full

deliberation in 1959 and reaffirmed in 1961. It is now settled constitutional law.

Under normal circumstances, therefore, and perhaps in the present instance, it would be enough to show that the case at bar is indistinguishable from the controlling precedents. We are mindful, however, that the present controversy involves the most delicate and dangerous of the Court's responsibilities—a review of the manner in which the Congress, an equal and coordinate branch of government, has performed one of its own Congressional functions. The dangers of collision which led the Court invariably to exercise deference and self-restraint in passing upon the constitutionality of legislation are multiplied when the Court is asked to review the legislative process itself, for any judicial review of the functioning of Congress, necessary as it may be under our constitutional system, not only intrudes into the sensitive area of Congress' internal affairs but affects its ability to legislate intelligently. For these reasons, we would be derelict in our duty, despite the precedents, if we failed to show in some detail the constitutional foundation for the Congressional investigation into Communist activities in the basic steel industry, during the course of which the Committee asked petitioner the pertinent questions that he refused to answer.

A. CONGRESS HAS POWER TO REQUIRE TESTIMONY, NOT OTHERWISE PRIVILEGED, IN AID OF AN INVESTIGATION INTO ANY PROPER SUBJECT OF CONGRESSIONAL LEGISLATION

In *Watkins* v. *United States*, 354 U.S. 178, in the course of an admirable restatement of the extent

and limits of the Congressional power of investigation, the Chief Justice wrote (*id.* at 187):

> The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. * * * But, broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.

This inherent power to compel testimony in aid of *bona fide* investigations extends to any subject upon which Congress has power to legislate.

In the Anglo-American tradition the power was first exercised by the British Parliament. Early in the sixteenth century and particularly after the Revolution of 1688 established the supremacy of Parliament, Parliament as a whole, or one of its many committees, conducted investigations compelling the production of persons or papers during its investigations. See Landis, *Constitutional Limitations on the Congressional Power of Investigation,* 40 Harv. L. Rev. 153, 159–164. These powers were carried over to the United States both in the colonial, and later State, legislatures; indeed, Professor Landis says that until 1880 no State court had denied or even curtailed the power of the State legislatures to investigate. *Id.* at 165–166. The basis of this power in the United States was aptly summarized by a New York court (*Briggs v. MacKellar,* 2 Abb. Pr. 30, 56–57 (1855):

> It is a well-established principle of this parliamentary law, that either house may institute any investigation having reference to * * * any matter affecting the public interest upon which it is important that it should have exact information, and in respect to which it would be competent for it to legislate. The right to pass laws, necessarily implies the right to obtain information upon any matter which may become the subject of a law. It is essential to the full and intelligent exercise of the legislative function * * *. In American legislatures the investigation of public matters before committees, preliminary to legislation, or with the view of advising the house appointing the committee, is, as a parliamentary usage, as well established as it is in England, and the right of either house to compel witnesses to appear and testify before its committees, and to punish for disobedience, has been frequently enforced.

The power of Parliament to investigate was also carried over to the Congress.[5] At the time of the constitutional convention, legislative power in common-law countries included the power to form investigative committees authorized to send for persons and papers. This was the practice in numerous Congres-

[5] In *Kilbourn* v. *Thompson*, 103 U.S. 168, 189, this Court said that the history of investigations by Parliament was not relevant to Congress' powers since Parliament had both judicial and legislative powers and that its investigations were carried out under the former power. However, Professor Landis has shown that, by the time Parliament conducted investigations, it had only legislative powers and that therefore Congress' powers can be traced back directly to the practices of Parliament. This position was accepted by this Court in *McGrain* v. *Daugherty*, 273 U.S. 135, 161.

sional investigations beginning as early as 1792 and continuing through the Civil War. Landis, *supra*, pp. 168–191. And, of course, since the Civil War, Congress has increasingly relied on investigations using compulsory process to determine whether and how it should legislate.

Until after World War II, the courts rarely ruled on the power of Congress to investigate, for the power was seldom challenged. See Landis, *supra*, p. 212. As early as 1821, however, in *Anderson* v. *Dunn*, 6 Wheat. 204, this Court sustained the power of the Speaker of the House to convict a person for attempting to bribe a member. The Court held that this power was necessarily implied in order for the legislative power to operate (*id.* at 226–227):

> But if there is one maxim which necessarily rides over all others, in the practical application of government, it is, that the public functionaries must be left at liberty to exercise the powers which the people have intrusted to them. The interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers.

In *Kilbourn* v. *Thompson*, 103 U.S. 168, however, the Court imposed an important limitation. There, a witness was arrested by the House for refusing to answer questions asked by a committee which was investigating a real estate pool, the bankruptcy of Jay Cooke & Co., and the resulting losses to numerous

creditors including the United States. The Court did not find it necessary to decide whether Congress had the power to investigate as part of its legislative function. For the Court held that the investigation was not into the administration of the government (it had deposited money with Jay Cooke & Co.) or into the need for new legislation, but rather into the "private affairs of individuals." *Id.* at 195. This subject was already before a federal court in a bankruptcy proceeding, and the Court held that Congress has no judicial power to conduct a similar proceeding.

While *Kilbourn* v. *Thompson* furnished an important counterpoise to the *Anderson* case by making it plain that the power of Congress is not to prosecute, expose, or put on trial, nothing in that decision cast doubt upon the power of Congress to investigate in aid of a legislative purpose.[6] The later decisions confirm the power and emphasize its breadth.

In *In re Chapman*, 166 U.S. 661, the Court sustained the power of a Senate committee to require a witness to testify concerning the allegedly corrupt influences attempted to be exerted during the Senate's consideration of a tariff bill. This decision also upheld the constitutionality of Section 102 of the Revised Statutes—the

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[6] Insofar as *Kilbourn* may suggest a strict and unfriendly interpretation of the purpose of a Congressional investigation or a niggardly view of the constitutional power to investigate, we submit that this decision is no longer the law. Thus, the Court in *United States* v. *Rumely*, 345 U.S. 41, 46, characterized *Kilbourn* v. *Thompson* as having included "loose language," as having been subjected to "weighty criticism," and as having been eroded by the later decisions in *McGrain* v. *Daugherty*, 273 U.S. 135, and *Sinclair* v. *United States*, 279 U.S. 263. See also Landis, *supra*, pp. 214-220.

predecessor of the statute under which petitioner was convicted (2 U.S.C. 192)—which gave the federal district courts power to punish for contempt of Congress. The Court stated that a house of Congress could investigate any matter within its jurisdiction. *Id.* at 667, 671.

During the 1920's, the Court decided the leading cases dealing with the investigatory powers of Congress.[7] In *McGrain* v. *Daugherty*, 273 U.S. 135, the Senate was holding a witness in custody, pending trial before the Senate itself, for refusing to appear before a committee investigating the administration of the Department of Justice. The Court held that a house of Congress has the power to compel witnesses before one of its committees, to give testimony needed to legislate, and to punish the witness for contempt if he refuses to comply. Relying on the history of investigations by Parliament, the colonial and State legislatures, and Congress itself, statutes enacted by Congress, and numerous decisions by State courts (*id.* at 161–168, 174), the Court stated that "[i]n actual

[7] The only intervening case of any relevance is *Marshall* v. *Gordon*, 243 U.S. 521. A United States Attorney after appearing before a House committee investigating his conduct, had written a letter which was defamatory and insulting to the House as a whole. The House convicted him of contempt. This Court, on petition for a writ of habeas corpus, held the conviction invalid. The basis for the Court's decision was its conclusion that the conviction constituted punishment for writing the letter, not for obstruction of Congress' legislative responsibilities. *Id.* at 545–546. The Court said that the implied power to punish for contempt extends only to actions which actually obstruct Congress, such as "contumacy in refusing to obey orders to produce documents or give testimony which there was a right to compel." *Id.* at 543.

legislative practice power to secure needed information by [investigation] has long been treated as an attribute of the power to legislate" (*id.* at 161) and that "the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function" (*id.* at 174). The Court reasoned (*id.* at 175):

> A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.

In response to an argument that the purpose of the investigation was not in aid of legislation, the Court answered that "the subject was one on which legislation could be had" and that, in the absence of con-

trary evidence, "the presumption should be indulged that this was the real object." *Id.* at 177, 178. It quoted with approval a decision of the New York Court of Appeals (*People* v. *Keeler*, 99 N.Y. 463, 487) that "[w]e are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed * * *." *Id.* at 178.

In *Sinclair* v. *United States*, 279 U.S. 263, a witness was convicted of contempt in a federal district court for refusing to answer questions asked by a Senate committee investigating the Teapot Dome scandal. The Court, in sustaining the conviction, repeated its holding in the *Daugherty* case that Congress has the power, as part of its legislative function, to conduct investigations. *Id.* at 291. The Court stated that, under *Kilbourn* v. *Thompson*, Congress could not investigate purely private or personal affairs; similarly, the Court said, Congress could not compel disclosure in order to aid the prosecution of pending suits. However, if the investigation has a legislative purpose, the "constitutional power [to investigate] is not abridged because the information sought to be elicited may also be of use in such suits." *Id.* at 295. Accord, *Hutcheson* v. *United States*, 369 U.S. 599, 618.

Subsequent cases applied the same fundamental principles. In *Barry* v. *United States ex rel. Cunningham*, 279 U.S. 597, the Court applied them to an investigation of corruption in a Senate election, saying that, "if judicial interference can be successfully invoked it can only be upon a showing of such arbi-

trary and improvident use of the power as will constitute a denial of due process of law." *Id.* at 620.[8] And in *Tenney* v. *Brandhove*, 341 U.S. 367, although the central holding was that members of a State investigating committee had an absolute privilege against liability under 8 U.S.C. 43, 47(3), the Court stated that "[t]o find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive." *Id.* at 378.[9]

Thus, the history of Parliament, of the State legislatures, and of Congress itself, and also the uniform decisions of this Court demonstrate the breadth of the power of Congress to conduct investigations, to compel the attendance of witnesses and the production of papers, and to punish disobedience as contempt. In a democracy these legislative powers arise out of necessity and are inherent in the legislative body. As Professor Landis has written (pp. 209–210):

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[8] *Jurney* v. *MacCracken*, 294 U.S. 125, involved a witness who destroyed records subpoenaed by a Senate committee investigating government air and ocean mail contracts. The Court upheld the power of the Senate to hold the witness, pending trial by the Senate, for contempt.

[9] In *United States* v. *Rumely*, 345 U.S. 41, the Court reversed a conviction for contempt on the ground that the resolution which authorized the committee to investigate lobbying activities did not encompass an investigation of efforts to influence the public generally. The Court construed the resolution narrowly to avoid a serious issue under the First Amendment, but did not resolve this issue. Of course, the First Amendment issue in *Rumely* did not involve the question whether Congress can constitutionally investigate Communist activities, the issue in this case.

Little need be said of the necessity for investigation where new problems are faced by Congress to be met with different devices for legal control. To deny Congress power to acquaint itself with facts is equivalent to requiring it to prescribe remedies in darkness. The use of committees for such purposes is, perhaps, most common. In 1892 the activities of the Pinkerton Detective Agency as strike breakers in the railroad troubles in the West, caused investigations to be conducted by both Senate and House. Such investigations have left major imprints upon legislation. The Court of Customs Appeals owes its origin thereto; restrictions upon the immigration of foreign contract labor followed upon the work of a House committee in 1889; the Transportation Act of 1920 followed in part the recommendations of the joint subcommittee of the Senate Committee on Interstate Commerce and the House Committee on Interstate and Foreign Commerce, appointed by the Act of July 20, 1916. Whether existing legislation protects competing interests, whether governmental control should penetrate still further into fields of private endeavor, whether conditions are critical enough to demand legislative interposition—answers to such problems require knowledge. For its attainment Congress has appointed committees authorized to inquire and to demand all necessary information; it cannot escape in the future from employing the same device.

B. LEGISLATION SAFEGUARDING THE NATIONAL SECURITY AGAINST SUBVERSIVE ACTIVITIES OF THE COMMUNIST PARTY IN THE BASIC STEEL INDUSTRY WAS A PROPER SUBJECT OF CONGRESSIONAL CONSIDERATION UNDER THE LEGISLATIVE POWERS GRANTED IN ARTICLE I, SECTION 8 OF THE CONSTITUTION

When the Committee subpoenaed petitioner and questioned him concerning his alleged Communist activities and Communist Party membership, it was investigating an effort of the Communist Party to "colonize" the basic steel industry. According to testimony before the Committee, after the Party was reconstituted in 1945, it reestablished its policy of concentrating attention upon basic industry and, as part of the effort to secure this control, it sent educated young Party members from colleges and universities to work as laborers in industrial plants, including the steel mills, where, concealing their role as professional revolutionaries, they would expand the Party's influence and coordinate its activities. The program of colonization, the Committee had reason to believe, was part of the major Communist conspiracy.

The investigation was undertaken against a long background of Congressional findings concerning the direction and purposes of the Communist Party. In the Subversive Activities Control Act of 1950, Congress, on the basis of detailed investigations, found that there exists a world Communist movement, foreign controlled, whose purpose is to establish Communist totalitarian dictatorship, by whatever means necessary, in countries throughout the world. Section 2, 50 U.S.C. 781. It further found that in furthering these purposes the foreign government controlling

the world Communist movement establishes organizations which, dominated from abroad, endeavor to bring about the overthrow of existing governments by force if need be and to establish in their place totalitarian dictatorships subservient to that foreign government. In the Communist Control Act of 1954, the Congress found and declared (Section 2, 50 U.S.C. 841):

> that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. * * * [T]he policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement.

Also in the background of the Committee's investigation at Gary was a general awareness of the disruptive tactics of Communists in seeking to gain control of labor unions with a view to using the resulting power for conspiratorial ends. The Court summarized the evidence available in 1947 in *American Communications Association* v. *Douds*, 339 U.S. 382, 388–389:

> Substantial amounts of evidence were presented to various committees of Congress, including the committees immediately concerned with labor legislation, that Communist leaders of labor unions had in the past and would continue in the future to subordinate legitimate trade union objectives to obstructive strikes when dictated by Party leaders, often in support of the policies of a foreign government. * * *

> No useful purpose would be served by setting out at length the evidence before Congress relating to the problem of political strikes, nor can we attempt to assess the validity of each item of evidence. It is sufficient to say that Congress had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not to support and further trade union objectives, including the advocacy of change by democratic methods, but to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action.

No one can seriously suggest that Congress has no power whatsoever to enact legislation designed to prevent a conspiracy dominated by an often hostile foreign power from infiltrating the basic steel industry as part of a program to overthrow the government by force and violence. The basic steel industry manifestly affects interstate commerce. *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1. It has been found on numerous occasions that labor disputes in the industry created an emergency endangering the national defense. *United Steelworkers* v. *United States*, 361 U.S. 39. The power of Congress to enact appropriate legislation directed at preventing Communist control of the labor movement in interstate industries was sustained more than a decade ago in *American Communications Association* v. *Douds, supra.* See also *Osman* v. *Douds*, 339 U.S. 846. It would seem plain, too, that appropriate measures designed to prevent a foreign dominated

conspiracy from overthrowing the government by force and violence is not only an inherent sovereign power but an exercise of the Congressional duty to provide for the common defense.

There is no occasion to reconsider here the correctness, or even the reasonableness, of the conclusions reached by Congress upon the evidence available. The power of Congress to investigate cannot depend upon its ability to prove in advance the answer to the very question to be investigated. It is surely enough that Congress has cause to believe that there may be a condition calling for appropriate legislation, for the purpose of the investigation is to ascertain whether the condition in fact exists. In the face of history and current information, no one can seriously deny that Communist activities in the basic steel industry might be found deserving of legislative action.

Indeed, this Court has for a decade and a half consistently sustained legislation predicated upon the view that the activities of the Communist Party are not only disruptive of sound labor management relations but endanger the security of the United States. Some of the cases evoked differences of opinion within the Court, but none of the opinions, whether for the Court or in concurrence or dissent, suggest that the activities of the Communist Party are immune from legislation.

The initial case was *American Communications Association* v. *Douds*, 339 U.S. 382, where the Court had before it Section 9(h) of the National Labor Relations Act, which barred from using the facilities

of the National Labor Relations Board, any union whose officers had not filed non-Communist affidavits. In sustaining Section 9(h) the Court squarely held that Communist activity in the labor movement is a fit subject of Congressional concern. Mr. Justice Jackson's concurring opinion succinctly summarized the reasons for distinguishing the Communist Party from true political parties. "From information before its several Committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party facade, the Communist Party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our constitutional system." 339 U.S. at 424. Its goal is *"to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate"* (italics in the original). *Id.* at 425. It "purposes forcibly to recast our whole social and political structure after the Muscovite model of police-state dictatorship." *Ibid.* It is "designed to undo the Declaration of Independence, the Constitution, and our Bill of Rights, and overturn our system of free, representative self-government." *Ibid.* *"Violent and undemocratic means are the calculated and indispensable methods to attain* [its] *goal"* (italics in the original). *Id.* at 429. It is "a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed." *Id.* at 432. Each member "pledges unconditional obedience to party authority. Adherents are known by secret or code names.

They constitute 'cells' in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded." *Ibid.* It, moreover, "*alone among American parties past or present is dominated and controlled by a foreign government.* It is a satrap party, which, to the threat of civil disorder, adds the threat of betrayal into alien hands" (italics in the original). *Id.* at 427.

The next case was *Dennis* v. *United States*, 341 U.S. 494, where the Court upheld the constitutionality, as applied to officers of the Communist Party, of the provisions of the Smith Act, making it a crime for any person knowingly or willfully to advocate the overthow of the government of the United States by force or violence or to organize any group which so advocates or to conspire so to advocate.

The special problems caused by the activities of Communists have also been the subject of legislation dealing with aliens. In *Carlson* v. *Landon*, 342 U.S. 524, the Court sustained the constitutionality of a provision of the Immigration Act allowing the Attorney General in his discretion to hold in custody without bail, pending determination of their deportability, aliens who are members of the Communist Party. The Court stated that "[w]e have no doubt that the doctrines and practices of Communism clearly enough teach the use of force to achieve political control to give constitutional basis, according to any theory of reasonableness or arbitrariness, for Congress to expel known alien Communists * * *." *Id.* at 535–536. *Harisiades* v. *Shaughnessy*, 342 U.S. 580, held that

the provision of the Alien Registration Act of 1940 authorizing deportation of aliens because of membership in the Communist Party was constitutional, even as applied to aliens whose membership had ended before passage of the Act. In an opinion by Mr. Justice Jackson, the Court held that due process was not violated, partly because *"Congress received evidence* that the Communist movement here has been heavily laden with aliens and that Soviet control of the American Communist Party has been largely through alien Communists" (emphasis added). *Id.* at 590.

Galvan v. *Press*, 347 U.S. 522, held that the provision of the Internal Security Act of 1950 for the deportation of any alien who has been a member of the Communist Party after entry is constitutional even as applied to an alien who had no knowledge that the Party advocated overthrow of the government. The Court stated that (*id.* at 529):

> [O]n the basis of extensive investigation Congress made many findings, including that in § 2(1) of the [Internal Security] Act [of 1950] that the "Communist movement * * * is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship," and made present or former membership in the Communist Party, in and of itself, a ground for deportation. Certainly, we cannot say that this classification by Congress is so baseless as to be violative of due process and therefore beyond the power of Congress.

More recently, in *Flemming* v. *Nestor,* 363 U.S. 603, the Court upheld a provision of the Social Security Act terminating old-age benefits for aliens deported for membership in the Communist Party. In *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, the Court sustained the constitutionality of the registration provisions of the Internal Security Act of 1950 concerning "Communist action organizations" against attack under the First Amendment and other provisions of the Constitution. This holding was specifically based on Congressional investigations like that involved here, and on the findings concerning the Communist Party which resulted from such investigations. *Id.* at 96–97, 102. And in *Scales* v. *United States,* 367 U.S. 203, 228–230, the Court upheld the membership clause of the Smith Act.

This Court has also upheld State power in relation to Communist activities in the United States. In *Gerende* v. *Board of Supervisors,* 341 U.S. 56, the Court held unanimously that Maryland could require every candidate on the ballot to swear in an affidavit that he was not engaged in any attempt to overthrow the government by force and violence. In *Garner* v. *Board of Public Works,* 341 U.S. 716, the Court held that a city has power to require its employees to execute affidavits disclosing whether they were or had ever been members of the Communist Party. *Adler* v. *Board of Education,* 342 U.S. 485, similarly determined that a New York statute which makes

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any member of an organization advocating the overthrow of the government by force or violence ineligible for employment in the public schools was constitutional. In *Beilan* v. *Board of Public Education*, 357 U.S. 399, and *Lerner* v. *Casey*, 357 U.S. 468, the Court found that State officials could question employees about their Communist affiliations and discharge them if they refused to answer. And in *Konigsberg* v. *State Bar*, 366 U.S. 36, and *In re Anastaplo*, 366 U.S. 82, this Court held that a State could constitutionally deny admission to the Bar to applicants who refused to answer questions pertaining to membership in the Communist Party. Mr. Justice Harlan said that "[t]his Court has long since recognized the legitimacy of a statutory finding that membership in the Communist Party is not unrelated to the danger of use for such illegal ends of powers given for limited purposes." 366 U.S. at 52.

The foregoing cases involved constitutionality of enacted legislation aimed at the subversive activities of Communists and the Communist Party. In most instances the decisions were by a divided Court, but we are not here concerned with the merits. In almost every instance, the legislative action was based upon a finding that the relevant activities of the Communist Party presented threats to the national welfare or security, and this Court's decision was based upon the view that that Congressional finding was not impermissible. The investigation that gave rise to citation of petitioner for contempt can be deemed outside the power of Congress only if it is held that no legislation upon the subject of Communist activi-

ties in the basic steel industry could be devised that Congress had power to enact. Such a holding would overturn the fundamental predicate of a decade of decisions by this Court.

A fortiori the earlier legislation and judicial opinions demonstrate that there was at least a reasonable foundation for believing that the activities the Committee was investigating might be found disruptive of labor conditions in the steel industry and dangerous to the national security. The point bears directly not only upon whether Congress had a legislative purpose but also, as we now show, upon the justification for any interference that the investigation might cause with freedom of political activity and expression. For it necessarily follows that, if Congress can legislate concerning Communist activities generally, and in the steel industry in particular, it can conduct investigations upon which to base legislation.

C. THE USE OF COMPULSORY PROCESS TO SECURE TESTIMONY CONCERNING ACTIVITIES OF THE COMMUNIST PARTY BELIEVED TO ENDANGER THE NATIONAL SECURITY BY "COLONIZATION" OF THE BASIC STEEL INDUSTRY DID NOT VIOLATE THE FIRST AMENDMENT

In exercising its broad powers of investigation Congress is subject to the restrictions imposed by the Bill of Rights upon all federal governmental activity. The Fifth Amendment privilege against self-incrimination has been frequently invoked and recognized. *E.g., Quinn v. United States*, 349 U.S. 155. In addition, "an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. * * * The First Amendment may

be invoked against infringement of the protected freedoms by law or by lawmaking." *Watkins* v. *United States*, 354 U.S. 178, 197. But here, as in *Barenblatt* v. *United States*, 360 U.S. 109, *Uphaus* v. *Wyman*, 360 U.S. 72, *Wilkinson* v. *United States*, 365 U.S. 399, and *Braden* v. *United States*, 365 U.S. 431, the Committee violated no rights guaranteed by the First Amendment.

Initially, we point out that a completely literal reading of the First Amendment would utterly destroy petitioner's argument. Petitioner is not complaining of a "law" but of compulsion to answer questions. He is not complaining that Congress has directly abridged his right to speak or punished him for its exercise. Petitioner, if he had testified, would have remained as free as ever from any form of legal restriction upon political activities or other forms of expression. His complaint is that the disclosure of views and activities that are unorthodox, unpopular, or even hateful to the general public, may subject him and others whom he names to public stigma, scorn, and obloquy, thus discouraging them and others from adhering to unpopular views lest they suffer such a fate in the future. Although, as held in *Watkins* v. *United States*, *supra*, these consequences are enough to raise questions under the First Amendment, it plainly requires something more than a literal reading of the words to hold that the amendment gives protection against indirect and collateral consequences resulting from the non-governmental activity of private persons. Furthermore, whatever may be the merits as an original matter of the "balancing test"

when dealing with a law which itself directly abridges freedom of speech or the press, questions of judgment and degree have to be faced in dealing with governmental activity which affects freedom of expression only because of indirect and collateral consequences."[10] It would hamstring government to hold that neither Congress nor the Executive may take any action, regardless of the need, which elicits any private response putting any pressure upon any person in his views or expressions. As the Chief Justice said in *Watkins*, 354 U.S. at 198:

> It is manifest that despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are barred. * * * The critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from any unwilling witness.

And in *Barenblatt* v. *United States*, 360 U.S. 109, 126–127, the Court held:

> Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public in-

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[10] With deference to the dissenting opinion of Mr. Justice Black in *Barenblatt* v. *United States*, 360 U.S. 109, 134, 141–142, we submit that questioning a witness, not in reprisal for anything he has said, is an exact parallel of the "cases suggesting that a law which primarily regulates conduct but which might also indirectly affect speech can be upheld if the effect on speech is minor in relation to the need for control of the conduct." Id. at 141. Such cases include *Kovacs* v. *Cooper*, 336 U.S. 77, 85–89; *Schneider* v. *State*, 308 U.S. 147; *Cantwell* v. *Connecticut*, 310 U.S. 296; *Lovell* v. *Griffin*, 303 U.S. 444, 451; *Thornhill* v. *Alabama*, 310 U.S. 88, 104, 106.

terests at stake in the particular circumstances shown.

1. The public interest to be served by petitioner's testimony was the need for information concerning putative subversive activities in a vital area in our national life—information that would be helpful not only in reviewing the effectiveness of existing legislation but also in determining what new legislation might be needed to meet existing or threatened evils. The hearing at which petitioner was questioned was conducted for the explicit purpose of securing information about the "extent, character, and objects of Communist infiltration and Communist Party propaganda activities in the Gary, Indiana, area" for the legislative purposes, among others, of considering a proposed amendment to Section 4 of the Communist Control Act, 50 U.S.C. 843, and possible amendments to the provisions of that Act relating to the use of the National Labor Relations Board by Communist-infiltrated labor organizations (for the text of the resolution authorizing the hearings, see *supra*, pp. 3–4).

The principal basic industry in Gary, Indiana, is the production of steel. The basic steel industry is vital to the health of the economy and the national defense. It has been the subject of numerous Congressional investigations.[11] Its industrial relations are

[11] Temporary National Economic Committee, Investigation of Economic Power, Price Discrimination in Steel, Monograph No. 41, 76th Cong., 3d Sess.; Hearings on Administered Prices, Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, Oct.–Nov. 1957, 85th Cong., 1st Sess.; Hearings, Subcommittee on the Study of Monopoly Power, House Committee on the Judiciary, 81st Cong., 2d Sess., Serial No. 14, Pt. 4A, *Steel*.

not only regulated by the National Labor Relations Act but have been repeatedly considered by national boards and commissions.[12] On several occasions labor disputes in the basic steel industry have been found to create emergencies affecting the national defense.[13] The establishment of Communist Party cells among steel workers, the capture or disruption of *bona fide* labor unions, the use of professional revolutionaries to secure positions of leadership by treachery and deception in aid of a foreign power were obviously matters of grave national concern.

The reality of these dangers and the disruptive effects of Communist influence in labor unions is shown by industrial history. We have already adverted to the mass of material available in 1947 showing Communist infiltration of labor organizations not to support and further trade union objectives but to make them a device for disrupting commerce and industry whenever the dictates of "political policy" should so require (see *supra*, pp. 37–38). For example, the Amalgamated Clothing Workers Union had been torn by its successful fight against Communist infiltration. And later, in 1949 and 1950, the Congress of Industrial Organizations found it necessary to expel eleven international unions because of

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[12] *E.g.*, U.S. Steel Industry Board, Report to the President on the Labor Dispute in the Basic Steel Industry (1949); National Labor Relations Board, Directive Orders and Opinions in the Little Steel Case (1942).

[13] *United Steelworkers* v. *United States*, 361 U.S. 39, 42; *Youngstown Co.* v. *Sawyer*, 343 U.S. 579.

Communist domination under which purported trade unionism was subverted to the aims of an international conspiracy.[14] For example, the committee which recommended expulsion of the United Mine, Mill and Smelter Workers Union stated (*Official Reports on the Expulsion of Communist Dominated Organizations from the CIO,* compiled by the Publicity Department, CIO (Sept. 1954), p. 13):

> The Communist Party is precisely this type of organization which the CIO is under a constitutional mandate to oppose—one which would use power to exploit the people for the benefit of an alien loyalty. The Communist Party speaks in the words of unionism and Americanism. But actually it matters not to the Communist Party whether a particular policy will advance or hinder the best interests of American labor. The sole test is whether the policy is required by the need of the Soviet Union. Only to the extent that the Soviet line permits will the propaganda mill of the Communist Party grind out platforms which are in consonance with the ideals of American labor. In event of conflict however, between the needs of the Soviet Union and the best interests of American labor, the former must always prevail.

The labor movement's alertness to its responsibilities strongly suggests that such problems can often be

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[14] United Electrical, Radio & Mechanical Workers; Farm Equipment Workers; American Communications Association; Food, Tobacco, Agricultural & Allied Workers Union of America; International Fishermen & Allied Workers of America; International Fur & Leather Workers Union; International Longshoremen's & Warehousemen's Union; International Union of Mine, Mill & Smelter Workers; National Union of Marine Cooks & Stewards; United Office & Professional Workers of America; United Public Workers of America.

better solved without legal intervention, but the possibility of a legislator's reaching that conclusion falls far short of demonstrating that the evil does not merit legislative consideration. Indeed, Congress chose to enact legislation in 1947[15] and 1954[16] aimed at reducing Communist influence in labor unions, and in 1959 it revised the 1947 legislation after 12 years of experience.[17]

The special problems posed by Communist activity among employees in basic industry make the public interest in this investigation particularly strong for upholding the exercise of Congressional power. In addition to the potential impact upon the critical steel industry, the same general public interest present in the *Barenblatt*, *Wilkinson*, and *Braden* cases—the right of self-preservation—is present here. Thus, in *Barenblatt* v. *United States*, *supra*, the Court sustained against attack under the First Amendment the interrogation of a witness concerning Communist activities in the field of education, saying (360 U.S. at 127-128):

> That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court. * * * In the last analysis this power rests on the right of self-preservation, "the ultimate value of any society." *Dennis* v. *United States*, 341 U.S. 494, 509. Justification for its exercise in turn rests on the long and widely accepted view that the tenets of the Com-

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[15] Act of June 23, 1947, 61 Stat. 143, 29 U.S.C. 159(h).

[16] Communist Control Act of 1954, 68 Stat. 775, 50 U.S.C. 792a.

[17] Act of September 14, 1959, 73 Stat. 536, 29 U.S.C. 504.

munist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress.

The weight to be assigned this public interest in acquiring knowledge of the working of the Communist conspiracy was emphasized in *Uphaus* v. *Wyman*, 360 U.S. 72, a case involving a witness before the Attorney General of New Hampshire, who was conducting an investigation on behalf of the State legislature. The witness was executive director of World Fellowship, an organization which ran a summer camp in New Hampshire. The witness refused to provide a list of guests of the camp, and was convicted of contempt. In upholding the conviction, the Court stated that the interest of the State was in the presence of subversives in New Hampshire; that the Attorney General "had valid reason to believe" that there was a "nexus between World Fellowship and subversive activities" and that the speakers and guests might be subversive persons; and that this nexus was adequate to justify the investigation since the investigation was undertaken "in the interest of self-preservation, 'the ultimate value of any society.'" 360 U.S. at 79–80. In contrast to the strong governmental interest, the Court found that the interest in associational privacy was "tenuous at best" because the camp was public, it was required to maintain a register open to police officers, and the only harm, public exposure, was "an inescapable incident of an investigation into the presence of subversive persons within a State." *Id.* at 80–81. In conclusion, the

Court stated, in upholding the conviction, that "the governmental interest in self-preservation is sufficiently compelling to subordinate the interest in associational privacy * * *." *Id.* at 81.

Subsequently, in *Wilkinson* v. *United States*, 365 U.S. 399, the Court sustained like questions in the course of a Congressional inquiry into Communist propaganda. Rejecting the witness' contention under the First Amendment, the Court held (*id.* at 413–414):

> The basic issues * * * were thoroughly canvassed by us in *Barenblatt*. Substantially all that was said there is equally applicable here, and it would serve no purpose to enlarge this opinion with a paraphrased repetition of what was in that opinion thoughtfully considered and carefully expressed.
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> The subcommittee's legitimate legislative interest was not the activity in which the petitioner might have happened at the time to be engaged, but in the manipulation and infiltration of activities and organization by persons advocating overthrow of the Government. * * *

The same principle was restated in *Braden* v. *United States*, 365 U.S. at 435:

> But *Barenblatt* did not confine congressional committee investigation to overt criminal activity, nor did that case determine that Congress can only investigate the Communist Party itself. Rather, the decision upheld an investigation of Communist activity in education. Education, too, is legitimate and protected

> activity. Communist infiltration and propaganda in a given area of the country * * * are surely as much within [the subcommittee's] pervasive authority as Communist activity in educational institutions. * * * Information as to the extent to which the Communist Party was utilizing legitimate organizations and causes in its propaganda efforts in [the South] was surely not constitutionally beyond the reach of the subcommittee's inquiry. Upon the reasoning and authority of *Barenblatt*, 360 U.S. at 125–134, we hold that the judgment is not to be set aside on First Amendment grounds.

The lower courts have likewise repeatedly held that the First Amendment does not prohibit Congress from investigating Communist activities in search of information necessary in order to legislate. *E.g., Barsky* v. *United States*, 167 F. 2d 241, 246 (C.A. D.C.), certiorari denied, 334 U.S. 843; *Lawson* v. *United States*, 176 F. 2d 49, 52–53 (C.A. D.C.), certiorari denied, 339 U.S. 934; *United States* v. *Josephson*, 165 F. 2d 82, 90–92 (C.A. 2), certiorari denied, 333 U.S. 838; *Eisler* v. *United States*, 170 F. 2d 273 (C.A. D.C.), certiorari dismissed, 338 U.S. 883; *United States* v. *Orman*, 207 F. 2d 148, 157 (C.A. 3); *Marshall* v. *United States*, 176 F. 2d 473 (C.A. D.C.), certiorari denied, 339 U.S. 933; *Dennis* v. *United States*, 171 F. 2d 986 (C.A. D.C.), affirmed on other grounds, 339 U.S. 162; *Sacher* v. *United States*, 252 F. 2d 828 (C.A. D.C.), reversed on other grounds, 356 U.S. 576; *Townsend* v. *United States*, 95 F. 2d 352, 361 (C.A. D.C.), certiorari denied, 303 U.S. 664; *United States* v. *Lattimore*, 215 F. 2d 847, 851 (C.A. D.C.); *Morford* v.

United States, 176 F. 2d 54, 57 (C.A. D.C.), reversed on other grounds, 339 U.S. 258; *United States* v. *Kamin*, 136 F. Supp. 791, 803 (D. Mass.); *United States* v. *Bryan*, 72 F. Supp. 58, 62 (D. D.C.), reversed on other grounds, 174 F. 2d 525 (C.A. D.C.); reversed, 339 U.S. 323. No lower court, as far as we have been able to ascertain, has ever held to the contrary.

The public interest in Congressional knowledge of Communist activities is underscored by the numerous decisions of this Court based upon the premise that the dangers of Communist subversion in the particular areas involved, as found by Congress, furnished an adequate constitutional foundation for substantive legislation. *American Communications Association* v. *Douds*, 339 U.S. 382; *Osman* v. *Douds*, 339 U.S. 846; *Carlson* v. *Landon*, 342 U.S. 524; *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Galvan* v. *Press*, 347 U.S. 522; *Flemming* v. *Nestor*, 363 U.S. 603; *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1; *Scales* v. *United States*, 367 U.S. 203. Upon the same premise the Court has upheld, against attack under the Fourteenth Amendment, State legislation, aimed at membership in the Communist Party, requiring those occupying or seeking public office to disclaim knowing membership in any organization advocating the overthrow of the government by force and violence. *Gerende* v. *Board of Supervisors*, 341 U.S. 56; *Garner* v. *Board of Public Works*, 341 U.S. 716. See also *Beilan* v. *Board of Education*, 357 U.S. 399; *Lerner* v. *Casey*, 357 U.S. 468; *Adler* v. *Board of Education*, 342 U.S. 485. The proposition that there is sufficient pub-

lic danger in the activities of the Communist Party, as now constituted and directed, to justify legislative investigation and appropriate legislation is thus deeply embedded in our constitutional law. To hold that the First Amendment prevents mere Congressional inquiry into Communist membership or activities would not only overrule *Barenblatt, Braden,* and *Wilkinson* but reject a basic premise of the consistent line of decisions beginning with *American Communications Association* v. *Douds, supra.*

Of course, each case rests in a measure upon its own facts. We do not suggest that just because there is sufficient interest in legislative knowledge concerning Communist activities to justify an appropriate use of compulsory process, therefore it was automatically constitutional to question petitioner. One must also evaluate, we assume, the reasons for calling the particular witness, the relevancy of the information he could be expected to furnish, and the potential harm to protected freedoms. We turn in a moment to those factors in the equation. But in terms of the ultimate legislative objective to be served, the present case is manifestly stronger even than *Barenblatt, Wilkinson,* and *Braden.* In those cases the House Committee was looking into education and propaganda, and the interest to be served was greater knowledge of the general nature of the Communist conspiracy. Here, as we pointed out above, the investigation was focused upon the vital steel industry in which political strikes or sabotage could seriously endanger the national security; it was focused, too, upon the kind of activity among workers

which had raised grave problems in the labor movement.

2. There was every reason to believe that petitioner could furnish pertinent and valuable information. Petitioner was not subpoenaed as a result of "indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee." *Barenblatt v. United States, supra,* 360 U.S. at 134. The Committee had information that petitioner was a long-time Party member who had actively participated in the Party's organization of the steel industry in the Gary, Indiana, area (see *supra,* pp. 10, 11, 13, 14), which was a vital part of the subcommittee's investigation of Communist activities in basic industry in Gary (see *supra,* pp. 3, 5, 7, 10, 12). He was apparently one of the "professional revolutionaries" with high education whom the Party had recruited to conceal their pasts, pose as laborers, and thus gain, for Communist purposes, key positions among the workers in basic industries (R. 165–166). His education and experience put him in a position where, if he were willing, he could apparently give invaluable information upon the direction, techniques, and purposes of the program of colonization.

3. It is beyond dispute that the information, which the Committee had reason to believe petitioner could furnish, was highly relevant to its legislative purposes. The Committee was investigating reports of Communist infiltration of basic industry in the Gary area by highly educated "professional revolutionaries" posing as ordinary workers. Reportedly, petitioner was

such a man. If this were true, it would be evidence of the truth of the reports, and of at least the partial success of the program. Affirmative answers, which the Committee had reason to expect, would also open the door to further inquiries eliciting more detailed informaiton. The direction of the questioning was fully explained to petitioner (see *supra*, pp. 4–5, 7, 9–10); it is also apparent upon the face of the questions. The answer to the introductory question concerning his residence prior to September 1957 (Count 1) would show whether he had been in Gary and therefore would, as an alleged member of the Communist Party, have a knowledge of Communist activities there. In addition, if the subject of his residence was carried back, it would indicate the truth or falsity of his application for employment, a fact tending to prove or disprove the reports concerning methods of "colonization." The relevance of the direct questions concerning "colonization" (Counts 2 and 4) is too plain for argument.

Whether petitioner was a member of the Communist Party in June 1949 when he sought employment in a Gary steel mill (Count 3) went to the heart of the question: an affirmative answer would help to confirm the reports of "colonization" and show that petitioner could give further information; a negative response would tend to show that the reports were exaggerated or inaccurate. In this respect, as in others, the present case is well within prior decisions. In *Barenblatt, supra* three of the five questions which the witness had refused to answer concerned his membership in the Communist Party (*id.* at 114): "Are you now a member of the Communist Party?"; "Have you ever been a member of the Communist Party?"; "Were

you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?" This Court specifically affirmed the conviction on the ground that these three questions were valid. *Id.* at 115. In *Wilkinson*, the sole question on which the witness was convicted, and therefore the question on which this Court affirmed, was "Are you now a member of the Communist Party?" 365 U.S. at 407. And in *Braden*, of the six questions on which petitioner was convicted, the question on which this Court affirmed was "Were you a member of the Communist Party the instant you affixed your signature to that letter?" 365 U.S. at 433, note 2. The question involved in Count 3 here—"Were you a member of the Communist Party on the 23rd day of June, 1949, which is the date of application filed in your name for employment in Gary?," *i.e.*, whether petitioner was a Party member at a particular time—is virtually identical to the questions in the *Barenblatt*, *Wilkinson*, and *Braden* cases and is in itself, as we have noted (p. 24) sufficient to sustain the conviction.[18]

Petitioner argues that there was no governmental interest in questioning him because the Committee already had all the information concerning Communist activities that petitioner could have supplied. Although there are other answers to petitioner's argument in this case (see *infra*, pp. 61–63), we most earnestly submit

[18] The pertinency of the questions to the subject under inquiry was not only clear on the face of the questions, but was explained to petitioner at the hearing (see *supra*, pp. 4, 5, 7, 9–10), even though he did not explicitly claim any lack of pertinency to the subject under inquiry then or at any time during the judicial proceedings.

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that the power of a Congressional committee to ask material questions in the course of an inquiry into a proper subject of legislative investigation cannot be made to depend upon a judicial determination of how helpful the Court would find the information. The pertinency of the questions to a duly authorized subject of investigation must be clearly established. The objective must be legislation, not prosecution, adjudication, or exposure (see *infra*, pp. 67–70). We also assume *arguendo* that there must be reason to believe that the witness has pertinent information. The public importance of Congress' acquiring pertinent information upon the subject under investigation must be weighed against any potential damage to liberties protected by the Bills of Rights. But once these points are covered, the judicial function is exhausted. The Court would be assuming to exercise the legislative function if it undertook to decide just how necessary—or how helpful—particular information would be. Choosing among relevant lines of inquiry, deciding when the ground has been adequately covered, relying upon testimony already received, or seeking further disproof or corroboration all are parts of the process of legislative investigation. For the court to undertake them would be inconsistent with the presumption of validity due to a coordinate branch of the government and violative of the separation of powers. See *Watkins* v. *United States*, 354 U.S. 178, 215.

This precept is as necessary in practice as it is sound in principle. No one can tell how helpful a logically material bit of evidence may be in the legislative

process without studying and drawing inferences from the evidence already introduced, ascertaining and appraising the other sources of information, weighing the kinds of legislation that might be drafted, and anticipating the probable response of the Senate and the House to particular evidence. A printed record supplies no basis for undertaking such a task; it can be performed only by lawmakers as part of the process of legislation.

In the present case, moreover, it is clear that the information sought to be elicited from petitioner would have been extremely helpful to the Congress. Petitioner argues that the Committee had conducted hearings in other localities upon the same or similar subject matter; that other witnesses at the Gary hearing testified concerning all the information known to petitioner; and that therefore the Committee sought only corroboration from petitioner. But even if petitioner's conclusion were correct and the Committee had expected to receive only corroborating testimony from him, there is an important governmental interest in having a well-informed witness confirm previous testimony—particularly when the existing evidence is in a controversial area and is therefore likely to be challenged. Especially in the area of subversive activities, the need for legislation may be a function of numbers. Communist control legislation touches upon civil liberties. If the "professional revolutionaries" seeking "to colonize" the basic steel industry were few or unsuccessful, a legislator might well conclude that the dangers might not justify the costs of legisla-

tion. If the infiltration were on a larger scale and more successful, he might reach the opposite conclusion.

Furthermore, it is not true that the Committee was seeking only cumulative evidence from petitioner. The Committee "knew nothing about the actual activities of the Communist Party * * * in Indiana as of the time of this hearing or shortly before" (R. 55). And there was every reason to believe that petitioner could give data about his training, activities, supervision, and contacts with other Communist infiltrators in a degree of detail supplied by no other witnesses. Certainly, the Court is not bound by the bare arguments of petitioner's counsel. Petitioner offered no proof that he could not have contributed new information to the investigation. He did not prove at his trial what information he had at the time the Committee questioned him. He cannot unilaterally determine—by comparing his own knowledge which he has not disclosed with the information he now claims was possessed by the Committee—that he could supply the Committee with no new information.[19]

The hearings which investigated Party colonization activities in other parts of the country (see Pet. Br.

[19] Even if petitioner had testified at his trial concerning the information he possessed at the time of the hearing, we do not think a defense would have been established merely because the Committee already had the information. At the least, petitioner would have had to give this reason for his refusal to answer at the time he appeared before the Committee. Even then, as we have stated above (pp. 59–61), we think that the value of petitioner's information—whether it was merely cumulative or not—was for the Committee to determine.

19) were, on their face, principally concerned with different, although related subjects. Although the Committee had information concerning two of the questions (petitioner's residence in 1957 and whether he was a Party member in 1949), these were only preliminary questions to establish that petitioner had knowledge of Party activities in the steel industry in the Gary, Indiana, area. Petitioner's answers to the other two questions concerning his own knowledge of Party activities in the steel industry in Gary (whether he knew of Party colonization in the steel unions in Gary before 1957 and whether there were Party colonies in the steel unions in Gary in 1957) might merely repeat previous testimony before the Committee. On the other hand, as the Committee hoped and expected (see *supra,* pp. 14–15), petitioner's answer might well provide new information in view of his active participation in these Party activities. In short, the Committee had reasonable ground to believe that petitioner had highly useful information on Communist infiltration in the steel industry.

4. In weighing the governmental interests in obtaining information from petitioner against the individual interests which he asserts, it is surely relevant that petitioner is asserting a right, not to express his beliefs and engage in open political activities, but to keep them secret; and he is complaining, not of any governmental abridgment of freedom of expression and association, but of fear of the lawful reactions of those who do not share his opinions, once the truth is known. In pointing this out we

do not mean to suggest that there is no constitutional issue. The Constitution implicitly recognizes a fundamental right of privacy against undue governmental prying, and a measure of privacy may be essential to freedom of belief and also, in the beginning, to effective political organization. That a constitutional question is raised, moreover, was adjudicated in *Watkins* v. *United States,* 354 U.S. 178, 196–198.

Nevertheless, the exact nature of the constitutional right asserted must be taken into account in weighing the governmental against the private interest. This is not a case of governmental interference with the political processes essential to the conduct of democratic government. Cf. *United States* v. *Carolene Products Co.,* 304 U.S. 144, 152, note 4. Nor can petitioner invoke the ultimate purpose of constitutional protection of speech "to foster peaceful interchange of all manner of thoughts, information and ideas." See the dissenting opinion of Mr. Justice Jackson, in *Kunz* v. *New York,* 340 U.S. 290, 295, 302. The guarantee of freedom of expression rests in the final analysis upon belief in the value of free competition in ideas when openly and publicly debated. In *Whitney* v. *California,* 274 U.S. 357, 372, 375, 377, Justices Brandeis and Holmes, concurring, stated:

> Those who won our independence believed * * * that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discus-

> sion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.
>
> * * * * *
>
> If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."[20]

Petitioner is unwilling to stake his beliefs upon such a test. He was not called in reprisal for any

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[20] The same basic idea was expressed by Mr. Justice Black, with whom Mr. Justice Douglas concurred, dissenting in *Viereck* v. *United States*, 318 U.S. 236, 251:

"Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment." * * *

The case involved a conviction for wilful omission of material facts on registration statements filed under the Foreign Agents Registration Act. The omissions concerned the activities of the defendant other than those in which he engaged as an agent of a foreign principal. The Court reversed the conviction on the ground that the Act did not authorize the Secretary of State to require that such information be furnished. Thus, the Court's reversal of the conviction in *Viereck* was based on grounds not material here. The quotation from the dissenting opinion was part of Mr. Justice Black's contention that "[n]o strained interpretation [of the Act] should frustrate its essential purpose." 318 U.S. at 251.

See also *United States* v. *Harriss*, 347 U.S. 612, 625-626; *United States* v. *Peace Information Center*, 97 F. Supp. 255 (D. D.C.).

thing that he had said. His fear is of public knowledge and discussion of the information the Committee sought to elicit. Nothing in the government's case against petitioner seeks to justify the slightest curtailment of true freedom of expression.

There is much less foundation for petitioner's claim of prejudice to fundamental freedoms than in *Barenblatt, Wilkinson,* and *Braden.* Barenblatt was a college teacher by profession and the investigation was into Communist infiltration in the field of education. The area is one of special and sensitive concern for full freedom of inquiry (cf. *Sweezy* v. *New Hampshire,* 354 U.S. 234, 250, 257, 260–264), and the inquiry was necessarily concerned primarily with ideas and propaganda. Similarly, in *Wilkinson* and *Braden* the Congressional inquiry was focused on Communist activities in spreading propaganda. Wilkinson was taxed at the hearings with having been sent to Atlanta, Georgia, "for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings." 365 U.S. at 416 (dissenting opinion of Mr. Justice Black). Braden apparently was called at least partly as a result of public letters urging opposition to measures there pending in Congress and criticizing the House Un-American Activities Committee. 365 U.S. at 451–454. There is no suggestion that the reason petitioner was subpoenaed had any connection with political opposition, and, surely, infiltration of critically important steel mills cannot be likened to political propaganda or college education.

In sum, we submit that here, far more clearly than in *Barenblatt*, *Wilkinson*, and *Braden*, the public interests served by the Congress's acquisition of pertinent information from petitioner concerning the threat of Communist infiltration of the vital steel industry—knowledge to be used in considering whether to enact remedial legislation—plainly outweighed petitioner's private interest in maintaining secrecy.

D. PETITIONER HAS MADE NO CASE OF EXPOSURE FOR THE SAKE OF EXPOSURE

The power of Congress to use compulsory process in eliciting testimony depends upon the existence of a legislative purpose. In *Kilbourn* v. *Thompson*, 103 U.S. 168, this Court held the process and subsequent citation for contempt invalid because the investigation was judicial in nature and "could result in no valid legislation on the subject to which the inquiry referred." *Id* at 195. And in *Watkins* v. *United States*, *supra*, the Court said (354 U.S. at 200):

> We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals.

The admonition has been repeated in later cases. *E.g.*, *Hutcheson* v. *United States*, 369 U.S. 599, 614.

We have shown above (pp. 36–45, 48–51) that conditions in basic industry are well within the power of

Congress to regulate, especially in the area of political strikes and national security. That this was the subject of the inquiry is apparent from the authorizing resolution; it was also explained to petitioner both at the start of and during the hearing (see *supra*, pp. 3–4, 4–5, 9–10). And the relevance and usefulness of the information that petitioner apparently could furnish is clear beyond dispute (see *supra*, pp. 58–59, 61–63).

Furthermore, there can be no doubt that Congress and the Committee as its delegate were actually concerned with possible legislation in this very area. Congress had already dealt with the subject in several enactments. In 1947 the Labor Management Relations Act inserted Section 9(h) into the National Labor Relations Act, closing the facilities of the National Labor Relations Board to unions whose officers had not filed non-Communist affidavits. See *American Communications Association* v. *Douds*, *supra*, 339 U.S. 382. After 12 years experience Congress deleted this provision and, in Section 504 of the Labor Management Reporting and Disclosure Act, made it a crime for a member of the Communist Party to hold union office. 73 Stat. 536, 29 U.S.C. 504. The Subversive Activities Control Act of 1950, as amended by the Communist Control Act of 1954, deals extensively with unions found to be Communist fronts or Communist-infiltrated. Act of September 23, 1950, 64 Stat. 987, 998, as amended by Act of August 24, 1954, § 10, 68 Stat. 778, 50 U.S.C. 792a. The resolution authorizing the hearings in this case, and the opening statement of the chairman at the hearings specifically referred to the

Committee's interest in appraising the effectiveness of the Communist Control Act and considering amendments thereto. Besides the legislation described in the resolution, the Committee had other legislation regarding Communism at the time petitioner was subpoenaed (*see supra*, pp. 12–13). At least two measures were directly related to subversive activity at critical defense facilities such as basic steel mills: a proposed Defense Facilities Protection Act of 1959 and H.R. 8121, which would have authorized the Secretary of Defense to establish a security program covering defense contractors and their employees.

With this legislation pending and the witness in a position to give highly relevant information, one could conclude that the Committee was abusing its powers only by challenging the motives of its members. The Court has consistently refused to embark upon such an inquiry. It is "not our function," the Chief Justice said in *Watkins*, to engage "in testing the motives of committee members. * * * Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served." 354 U.S. at 200. Accord, *Barenblatt* v. *United States*, 360 U.S. 109, 132; *Wilkinson* v. *United States*, 365 U.S. 399, 412. The rule is not new, nor is it confined to Congressional investigations. As long ago as *McCray* v. *United States*, 195 U.S. 27, 55, it was held that there is no authority in the judiciary to restrain a lawful exercise of power by another department of the government because a wrong motive or

purpose has impelled the exercise of the power. See also *Arizona* v. *California*, 283 U.S. 423, 455.

The record contains not the slightest indication that the purpose of the Committee was to expose petitioner. Petitioner has not made that contention. In this respect the present case again is stronger than *Barenblatt*, *Wilkinson*, *Braden*, and *Uphaus*, and affirmance here would be consistent with an important ground of dissent in those cases. Thus, in *Barenblatt*, the sole reason stated by Mr. Justice Brennan for reversing the conviction was that "no purpose for the investigation of Barenblatt is revealed by the record except exposure merely for the sake of exposure. This is not a purpose to which Barenblatt's rights under the First Amendment can validly be subordinated." 360 U.S. at 166. Here the record demonstrates conclusively that the Committee had a legislative purpose and was not intending to expose witnesses or anyone else. Mr. Justice Brennan's dissenting opinions in *Uphaus* and *Wilkinson* are distinguishable upon the same ground, as are large portions of the opinions of Mr. Justice Black and Mr. Justice Douglas.[n]

[n] In *Braden*, Mr. Justice Douglas' dissenting opinion, in which Mr. Justice Brennan joined, was based entirely on the ground that the witness' conviction was invalid because his refusal to answer the Committee's questions was based on his reliance in good faith on the *Watkins* decision. 365 U.S. at 456–457. The majority of the Court, relying on *Sinclair* v. *United States*, 279 U.S. 263, 299, held that such a mistake of law is no defense. 365 U.S. at 437–438. Petitioner here makes no contention that he relied in good faith on earlier decisions and therefore this issue is not before the Court.

II

THE TRIAL COURT PROPERLY EXCLUDED EXPERT TESTIMONY CONCERNING THE FIRST AMENDMENT ISSUE

Petitioner also argues (Pet. Br. 21–25) that the trial court erred in refusing to consider the proffered expert testimony of Professor Emerson in weighing the private and public interests in order to determine petitioner's First Amendment rights. This contention is likewise erroneous.

A. Professor Emerson's qualifications as an expert were that he was a professor of law at Yale University and had made extensive studies in the field of civil liberties (R. 93–97). He testified that he had "concerned [himself] a good deal with the Committee on Un-American Activities" (R. 97). His attention was then directed to this Court's decision in *Barenblatt* v. *United States, supra,* with which he stated he was familiar, and he was asked, (R. 97):

> Have you an opinion as to the various considerations which have to be taken into account in balancing the competing public and private interests at stake in the circumstances here presented?

The government objected on the ground that the question sought testimony from the witness on a matter of law, not of fact: "The question invades the province of the Court. It is asking for an interpretation of existing cases, which it is for this Court to decide, not for the witness to decide, whether or not he is an expert" (Tr. 228).[22]

[22] "Tr." refers to the reporter's typewritten transcript of the trial proceedings.

The trial court held that the question sought in effect an involved legal opinion (R. 98) and sustained the government's objection to its admission (R. 99). The court, however, permitted petitioner to put the testimony into the record as an "offer of proof" for purposes of appeal. Petitioner's counsel rephrased the question to insert the word "factual" before the word "considerations" (R. 99). The government again objected and the objection was sustained (R. 100).

Professor Emerson testified that the government's interest in seeking information from petitioner was to pass legislation protecting against overthrow of the government by force and violence (R. 100). He stated that in weighing this interest the court should consider six factors. First, present statutes (which he described) already performed this purpose. Second, the country was strong economically, politically, and socially. Prosperity, according to Professor Emerson, made an economic collapse unlikely; no strong radical groups existed which constituted a danger to internal security, particularly since there was no indication that the police or military were sympathetic to attempts to overthrow the government; and there was no serious social unrest (R. 103). Third, Professor Emerson testified, the Communist Party was extremely weak in 1958 both in numbers and positions of importance; security programs prevented the infiltration of government and industry; and Communist power in labor unions, religious and educational institutions, and the Negro community was extremely small (R. 103-106). The fourth factor in

determining the government's interest was the activity of the A.F.L.–C.I.O. and other unions in preventing Communist infiltration of labor (R. 106–107). Fifth, Professor Emerson stated that the House Un-American Activities Committee, as shown by its reports, already "had taken substantial testimony on the questions that they addressed themselves to in the Gary proceedings" (R. 107). And, finally the Committee could obtain substantial information from voluntary witnesses (R. 108).

Professor Emerson then expressed his opinion concerning the factors which the district court should consider in determining the individuals' interest in refusing to testify. First, citing Milton, Jefferson, Mill, Chaffee, Holmes, Brandeis, and recent psychological studies, he testified that the "freedom of expression is essential to individual integrity and dignity" and to the right to develop and realize the individual's potentialities (R. 108). Second, the witness said, the right of silence "recognized in the classic flag salute case" "is particularly important in modern society when so many pressures tend toward conformity" (R. 109). And, third, the individual has the right of association which "is based on the weakness of the individual as a single person to accomplish political or social change" (R. 109). Professor Emerson emphasized that society, as well as the individual, has an important interest in freedom of expression since it "is a basic and absolutely fundamental principle of the democratic process" (R. 109). He described the serious effect on the individual's interest from Congressional investigation of

beliefs and associations: the mere questioning of the witness inhibits him from freely expressing himself; economic harm often results such as the loss of employment; and the witness is often socially ostracized (R. 110–111). In addition, other people besides the witness become afraid to engage in similar political activity and associations (R. 111). These effects are not confined, according to Professor Emerson, to the Communist Party since it is impossible to draw any clear line; the "whole area left of center * * * becomes smeared * * * with the same color" (R. 111–112).

Finally, Professor Emerson stated that he thought that the forces in this country tending toward a closed society restricting independent thinking and activity were now stronger than those supporting an open society (R. 113). In support of this judgment, he noted the great number of government employees subject to loyalty tests, the large units which dominate the economy, and the unanimity of opinion expressed by mass media and educational institutions (R. 113–114). He therefore stated that "as of this time what is needed, in terms of freedom of expression, is that society encourage independence, unorthodoxy and differences * * *" (R. 114).

Professor Emerson concluded (R. 115):

> My answer is, on the basis of the foregoing considerations, it is my opinion that the interests of the Government in obtaining answers to the questions put to this defendant as an aid in developing further legislation to pro-

> tect internal security are substantially outweighed by the interest of the individual in freedom of speech or silence, as he may prefer, and by the interest of the community in maintaining freedom of political expression and other conditions essential to maintaining an open society.

After hearing Professor Emerson's testimony, the government renewed the objection to its admission, on the same grounds as previously stated (R. 115). In finally excluding the proffered testimony, the trial court said (R. 116):

> [I]t seems to me that expert testimony of this kind is not material in that it is not a question of fact as to what elements go to make up the balance of interests, public and private, but a legal matter, which is within the province of the Court to decide; and it is not a subject of expert testimony.

Petitioner's contention that the trial court's refusal to allow the introduction of Professor Emerson's testimony was reversible error is without merit for at least two reasons. First, we submit that, as the two courts below held, the testimony was not properly admissible. It consisted principally of arguments concerning what legal factors the court should consider and what weight should be given to each of these factors, not with factual evidence relating to the factors which the court might consider. Thus, Professor Emerson's statement, coming at the close of petitioner's case, reads like the closing argu-

ment of able counsel summarizing his client's legal position under the First Amendment. While such a statement could be properly presented by petitioner's counsel as legal argument, the trial court correctly held that it was not evidence.

Second, even if Professor Emerson's testimony were properly admissible, we submit that petitioner's conviction should nevertheless be sustained. This testimony was offered solely in relation to petitioner's claims under the First Amendment. The issue whether a witness' rights under the First Amendment have been violated by a Congressional committee is, as the *Barenblatt*, *Wilkinson*, and *Braden* cases plainly show, a question of law. Therefore, this Court can consider Professor Emerson's testimony which is fully set forth in the record—in determining petitioner's First Amendment claims (assuming, contrary to our contentions above, that the testimony is admissible for this purpose).

There is no need for the district court to make the initial determination of the issue whether petitioner's First Amendment rights have been violated on the basis of the record including Professor Emerson's testimony. Not only is the issue, as stated above, a question of law, but we think its resolution is perfectly clear. Professor Emerson's testimony gave no new legal or factual considerations which were not considered by this Court in *Barenblatt*. There the Court relied heavily on numerous earlier decisions which described the serious danger to the country arising

from Communist activities (360 U.S. at 127–129). *E.g., American Communications Ass'n v. Douds*, 339 U.S. 382, 388–389; *Dennis v. United States*, 341 U.S. 494, 498; *Carlson v. Landon*, 342 U.S. 524, 535–536; see Subversive Activities Control Act of 1950, Title I, § 2, 64 Stat. 987–989. On the other hand, Mr. Justice Black, in dissenting in *Barenblatt*, emphasized the interest "in being able to join organizations, advocate causes and make political 'mistakes'" and contended that the interest of the government in "self-preservation" was "vastly overstated." 360 U.S. at 144. Professor Emerson's testimony added little to these basic contentions except to spell out the competing considerations in greater detail. Thus, he presented no evidence which could change the Court's determination in *Barenblatt*, *Wilkinson*, and *Braden* that Congressional committees can compel witnesses to testify concerning their Communist activities without violating the First Amendment. And, as we have shown earlier (pp. 56–57, 66, 70), the particular circumstances of this case are even stronger in favor of the governmental as opposed to the private interests than in those three cases.[23]

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[23] The Court also noted, in weighing the government's interest, the valid legislative purpose of the committee, the relevancy of the questions asked the witness, and the lack of any indication that the committee was trying to pillory the witness or was using dragnet procedures (360 U.S. at 132–134) (see *supra*, pp. 57–59, 67–69).

III

THE STATUTE UNDER WHICH PETITIONER WAS CONVICTED IS NOT UNCONSTITUTIONALLY VAGUE

Petitioner contends (Pet. Br. 30–32) that the statute under which he was convicted, *i.e.*, House Rule XI, the Committee's authorizing resolution, was unconstitutionally vague. In fact, however, the petitioner was convicted of violating 2 U.S.C. 192 (see Pet. Br. 3), the contempt-of-Congress statute, which is perfectly clear. Convictions under this statute have been repeatedly upheld by this Court, as in the *Barenblatt*, *Wilkinson*, and *Braden* cases.

Petitioner's argument is therefore not aimed at the statute under which he was convicted, but rather at the resolution of the House of Representatives authorizing the Committee to conduct investigations of Communist activities. Rule XI, Rules of the House of Representatives, 60 Stat. 823, 828 (see Pet. Br. 3). Rule XI, however, is not a criminal statute; it does not prohibit or punish any conduct. Instead, it merely confers authority on the Committee to conduct investigations within a particular area. Thus, the rules for construing criminal statutes do not apply to the construction of Rule XI.

Petitioner, however, claims (Pet. Br. 30) that this Court held in *Watkins* v. *United States*, 354 U.S. 178, 208, and *Sacher* v. *United States*, 356 U.S. 576, 577, that Rule XI must be treated as a criminal statute.[24]

[24] The *Sacher* case actually involved the Senate Internal Security Subcommittee, which, of course, has a different authorizing resolution.

Those cases state only the proposition, to which we of course agree, that "the courts must accord to the defendants [under 2 U.S.C. 192] every right which is guaranteed to defendants in all other criminal cases." 354 U.S. at 208. The Court then went on in *Watkins* and *Sacher* to require that the Congressional committee explain to the witness, upon proper objection, the pertinency of its questions to the subject under inquiry. But, as the Court expressly said in *Watkins*, the subject under inquiry could be made clear to the witness not merely by the House or Senate resolution establishing the Committee but also by the resolution of the committee authorizing the particular hearings, the opening statement of the committee chairman, the testimony of other witnesses who appear at the hearings and statements made by the committee to them, and statements made by the committee to the particular witness himself. 354 U.S. at 209–214. Thus, in *Barenblatt*, the Court relied on the opening statement of the chairman and testimony by other witnesses to show the subject under inquiry. 360 U.S. at 124–125. Rule XI was considered in *Barenblatt* only in order to determine whether the committee was authorized by the House of Representatives to conduct the investigation. In no contempt-of-Congress case has the Court considered Rule XI as part of a criminal statute under which the witness was convicted.

It is therefore clear that the government is required to rely on Rule XI only to show that the Committee was authorized by Congress to investigate Communist activity in basic industry. This Court has specifically

held that Rule XI is sufficiently clear to give the Committee authority to investigate Communist activities. In *Barenblatt,* the Court stated (360 U.S. at 117):

> Petitioner also contends * * * that the vagueness of Rule XI deprived the Subcommittee of the right to compel testimony in this investigation into Communist activity. We cannot agree with this contention, which in its furthest-reach would mean that the House Un-American Activities Committee under its existing authority has no right to compel testimony in any circumstances.

After an extensive discussion of the history of Rule XI, the Court concluded that "the Rule cannot be said to be constitutionally infirm on the score of vagueness." 360 U.S. at 122–123. Similarly, in *Braden,* this Court rejected the petitioner's contention that Rule XI was "fatally vague"[25] by holding that Rule XI properly authorized the investigation, 365 U.S. at 433; see also *Wilkinson* v. *United States,* 365 U.S. 399, 409.

In all three of these cases, this Court upheld convictions under 2 U.S.C. 192 for refusal to answer questions asked by this very same Committee pursuant to the authority given it by the House of Representatives in Rule XI. Rule XI was sufficiently clear to sustain a conviction in those cases; it is equally sufficient, under essentially the same circumstances, to sustain petitioner's conviction here.

[25] See the petitioner's brief in No. 54, Oct. Term 1960, pp. 40–42.

IV

THE COMMITTEE'S RULES DID NOT REQUIRE THE COMMITTEE TO GRANT PETITIONER'S REQUEST TO APPEAR AT AN EXECUTIVE SESSION

Petitioner argues (Pet. Br. 26–29) that the Committee's failure to allow him to appear at an executive session, instead of at the public hearings, violated its rules, and so excused his refusal to answer questions in the public session. This argument, too, is without merit.

Although petitioner was served with the Committee's subpoena on January 23, 1958 (Gov. Ex. 2, p. 2), he did not ask the Committee to appear at an executive session until February 6, 1958, the Thursday preceding the Monday on which he appeared as a witness. On that date, his counsel sent a telegram which was addressed to the Committee counsel, not to the Committee or its chairman (R. 284a), which stated (Def. Ex. 1):

> Undersigned represents Edward Yellin and Nicholas Busic. On their behalf I request executive session in lieu of open session. Testimony needed for legislative purposes can be secured in executive session without exposing witnesses to publicity.

Since the telegram arrived in Washington after the Committee chairman and counsel had left for Gary, Indiana, to conduct the hearings (R. 37, 39), it was answered by the Committee staff director, who denied the request (Def. Ex. 2). The record shows that the staff director had no authority to act on petitioner's request (R. 286a).

Petitioner relies on Rule IV–A of the Rules of Procedure of the House Committee on Un-American Activities as requiring the Committee to grant his request for an executive session. Rule IV–A states:

> If a majority of the Committee or Subcommittee, duly appointed as provided by the rules of the House of Representatives, believes that the interrogation of a witness in a public hearing might endanger national security or unjustly injury his reputation, or the reputation of other individuals, the committee shall interrogate such witness in an executive session for the purpose of determining the necessity or advisability of conducting such interrogation thereafter in a public hearing.

Rule IV–A does not give a witness a right upon request to an executive session whenever specified circumstances are present so that the Committee's refusal to provide this right is reviewable in the courts. Instead, the rule leaves it to a majority of the Committee, or appropriate subcommittee, to decide whether to interrogate the witness in executive session. Thus, the rule provides that a witness be questioned in executive session whenever "a majority of the Committee or subcommittee * * * *believes* that the interrogation of a witness in a public hearing might * * * unjustly injure his reputation * * *" (emphasis added). This language gives the Committee sole discretion whether to hear a witness in public or executive session.

The Committee in fact decided not to have petitioner testify at an executive session even though

it did not know that petitioner had requested such an appearance. Congressman Walter testified that "the Committee * * * passed on the question of whether or not we would hear Mr. Yellin at a session when the purpose of calling him was discussed, and it was decided then that the rule with respect to an executive session was not applicable * * *" (R. 70).

We have emphasized that Rule IV–A confers no right on petitioner to have this determination reviewed by the courts. Even if Rule IV–A did implicitly provide for a right of review, it is clear than a Congressional committee has broad discretion in determining its own procedure upon such questions as whether to hear a witness in an executive or public session. There is nothing in this record to suggest that the Committee abused its discretion in this case.[26]

V

THE QUESTIONS WHICH WERE THE BASES FOR COUNTS 2 AND 4 WERE NOT TOO VAGUE TO SUPPORT THE INDICTMENT

Petitioner claims (Pet. Br. 32–34) that the questions contained in Counts 2 and 4 are too vague to

[26] Petitioner also suggests (Pet. Br. 27, footnote) that Rule XI(m) of the House Rules gave him the right to appear in executive session. The language of this provision indicates that it was intended to protect persons other than the witness himself from being injured since it allows the injured person "an opportunity voluntarily to appear as a witness * * *" As the Committee counsel testified at the petitioner's trial (R. 88–90), this was the Committee's interpretation of the Rule. Moreover, Rule XI(m), like Rule IV–A of the Committee's own rules, confers no right on anyone to appear in executive session unless the Congressional committee so determines—a determination which was not made in this case.

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satisfy the Sixth Amendment and Rule 7(c) of the Federal Rules of Criminal Procedure, which require "that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation." The question involved in Count 2 was: "Will you tell the Committee, please, whether or not incidents came to your attention of the colonization of the steel unions in Gary by the Communist Party at any time prior to September 1957?" The question involved in Count 4 was: "Will you tell the Committee whether or not in 1957 there were present in any of the steel unions at Gary, Indiana, persons who were known to you to have been colonizers of the Communist Party?"

Petitioner specifically does not question the fact that he understood the meaning of these questions. Rather, he states that "[t]he issue was not whether he understood the question, but whether the indictment met the requirements of the Sixth Amendment and of Rule 7(c) of the Rules of Criminal Procedure" (Pet. Br. 33).

A. First, even if, contrary to our contentions below, Counts 2 and 4 are invalid because of the vagueness of the questions, petitioner's convictions still must be affirmed. He received concurrent sentences on all four counts and therefore his conviction must be sustained if any one count is valid. *E.g., Barenblatt* v. *United States,* 360 U.S. 109, 115. Thus, petitioner's attack on these two counts need not even be considered by the Court.

B. Second, petitioner is precluded from raising this issue because it was not presented—or even sug-

gested—in his petition for a writ of certiorari. Therefore, under Rule 40(1)(d)(2) of the Rules of this Court, he cannot raise it in his brief on the merits unless there was "plain error." *E.g., Kessler* v. *Strecker,* 307 U.S. 22, 34.

C. In any event, petitioner's contention is clearly without merit. The Sixth Amendment and Rule 7(c) require that "[t]he indictment * * * be a plain, concise and definite written statement of the essential facts constituting the offense charged" (Rule 7(c)), so that the accused can adequately defend himself and can plead a conviction or acquittal in bar of a subsequent prosecution for the same offense. *E.g., Russell* v. *United States,* 369 U.S. 749, 762–764; *United States* v. *Debrow,* 346 U.S. 374, 376–378. The indictment set out clearly the Committee's investigative authority, the subject under inquiry, the facts concerning the hearing, the subpoenaing of petitioner, his appearance, and his wilful refusal to answer five pertinent questions, each of which was quoted (R. 1–3). Thus, whether or not the questions themselves were vague, these allegations clearly and sufficiently allege that petitioner violated 2 U.S.C. 192 by wilfully refusing to answer pertinent questions asked by a Congressional committee. The fact that the indictment did not spell out the meaning of the questions did not prejudice petitioner either in preparing his defense or by allowing the possibility of a new prosecution for the same offense.

As to preparing his defense, it would not have helped petitioner to have the indictment specify the meaning of the questions. The charge was that he

had refused to answer the questions. The only possible defense which could turn upon their meaning is that petitioner refused to answer the questions because he did not understand them. But that defense depends on whether petitioner understood their meaning when he appeared before the Committee; if he did not understand the questions at that time, it would do no good to acquaint him of their meaning in the indictment.[27] As to a second prosecution, the indictment specified the Committee holding the hearing, the time of the hearing, and the questions petitioner refused to answer. There was no possibility of a second prosecution for petitioner's refusal to answer these same questions.

The indictment was not required to detail the meaning of the questions which petitioner refused to answer either by describing their context in the hearing or by defining the various words which were used. Frequently, questions standing alone are vague and ambiguous. For example, in the *Barenblatt* case, this Court upheld the conviction of a witness for refusing to answer the question, "Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?" 360 U.S. at 114. The indictment never described the Haldane Club or its exact connection with the Communist Party. A requirement that such questions be explained in the indictment would be contrary to the language and

[27] We show below (pp. 87–90) that petitioner did understand the questions at the time he refused to answer them and that, in any event, this defense is not open to him since he did not claim that the questions were vague at that time.

purpose of Rule 7(c) that the indictment be a concise statement of the essential facts. The meaning of the question is not an essential element of the crime of contempt; it is the wilful refusal to answer which constitutes the crime.

D. It appears, despite the denial in his brief, that petitioner's real contention is that the questions did not adequately apprise him of the information sought by the Committee and that therefore he cannot be convicted of contempt. We agree that a witness before a Congressional committee cannot be convicted of *wilfully* refusing to answer questions asked by a Congressional committee if the witness informs the Committee that he cannot understand what information the Committee is seeking and the Committee nevertheless fails to state or explain the questions with reasonable clarity. We emphasize, however, that the witness is required to object on the ground of vagueness at the time the questions are asked by the committee. Just as with regard to the pertinency of the questions to the subject under inquiry, the committee can easily explain the meaning of its questions if the witness is in doubt. Therefore, the issue of vagueness, like the issue whether the committee sufficiently apprises the witness of the pertinency of the questions (*Barenblatt* v. *United States, supra,* 360 U.S. at 123–124; *Deutch* v. *United States,* 367 U.S. 456, 469), cannot be raised for the first time at trial. Here, petitioner, although he made several objections to the questions he refused to answer, did not even indicate that he failed to understand them.

On the other hand, unlike the situation with regard to the issue of pertinency, we do not think that the government is required to prove the meaning of the questions at the witness' trial for contempt when he fails to raise the issue before the committee. In *Deutch,* this Court held, even though the pertinency of the questions was not questioned at the hearing, that the government is required to prove pertinency at the trial. 367 U.S. 468. This holding was based entirely on the explicit requirement of 2 U.S.C. 192 that the questions be "pertinent to the question under inquiry." Since 2 U.S.C. 192 does not make the clarity of the question an element of the offense, we do not think that the government is required to prove it, unless it was timely raised before the committee itself.

In any event, in this case, the meaning of the questions in Counts 2 and 4 was made clear to petitioner at the hearing and the introduction of the transcript of the hearing satisfied any burden the government may have had to show their meaning at petitioner's trial. The only possible vagueness in the two questions concerns the words "colonization" in Court 2 and "colonizer" in Count 4. Petitioner admitted that he was present while John Lautner, a long-time high official in the Communist Party, testified before the Committee (Hearings, p. 1976). During this testimony, the Party's colonization program was repeatedly described. Lautner testified that, after the 1945 reconstruction of the Party, a policy of colonization was begun (*id.* at pp. 1964–1965). He described as

Party colonizers trained Party members who were assigned to organize Party activities in the steel industry in the Middle West (*id.* at pp. 1965–1966). Lautner further testified that after the 1948 Party convention one J. Peters "organized a number of classes for colonizing party members" and that in the spring of 1949 Party members, who had just graduated from college, became colonizers in various industries (*id.* at p. 1967). At this point, Lautner defined a "colonizer" (*id.* at p. 1968):

> A colonized Communist is one who is a professional revolutionary, who has uprooted himself from his home environment and carried out a party instruction, one who may have had personal problems, family problems, but that was secondary. The first was the problem of the party, and he submitted himself to become a person who will solve for the party their problems and become a colonized Communist *to carry out Communist work in a basic industry.* [Emphasis added.]

Lautner said that colonizers get jobs in a major industry by misrepresenting their college education (*ibid.*). Subsequently, the counsel of the Committee summarized Lautner's testimony about Peters: "You told us about * * * classes that were conducted by J. Peters, training young men in the universities to go out and engage in colonization in industry" (*id.* at p. 1968). Lautner said that the Party believed that "the best way to get back into the main stream of labor would be to colonize capable Communist organizers in the basic industries * * *" (*id.* at p. 1971).

Before petitioner was finally ordered to answer the question involved in Count 2 concerning whether he knew of colonization by the Communist Party in steel unions in Gary, Indiana, prior to September 1957, the Party's program of colonization was explicitly described to him. The counsel of the Committee stated (Hearings, p. 1986):

> It has been testified here that colonization of young men in the middle of their educational courses in industry was a deep seated plan of the Communist Party to strengthen itself within basic industry.

After petitioner then told the Committee that he was present when Lautner testified, the Committee counsel said that "[t]he statement was made here of the practice of the Communist Party in colonizing industry at Flint, Michigan; at the University of Colorado, which is at Fort Collins, Colorado, where you now reside; and other places" (*ibid.*).

In short, we submit that the record of the hearings shows that petitioner was fully acquainted with the claim to the Party's colonization program in basic industries before he refused to answer the questions involved in Counts 2 and 4. He clearly knew that the Committee's questions sought to obtain information of Party organizing activities in the steel industry in Gary, Indiana.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court of appeals should be affirmed.

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OCTOBER 1962.

APPENDIX

The House Un-American Activities Committee has made numerous recommendations involving Communist activities generally, which of course include Communist activities in defense plants. In addition, the Committee made the following legislative recommendations having a direct impact on Communist activities in industry, and Congress took the following action on these recommendations, through the year 1960:[1]

1. *Committee recommendation.*—Adoption of H.R. 3903, 81st Cong., 1st Sess., providing for safeguards against employment of subversive individuals in defense plants (March 15, 1950).

Action.—Section 5 of the Internal Security Act of 1950, 50 U.S.C. 784, provides that members of a Communist-action organization, as defined in the Act, shall not hold employment in a defense facility, and that members of a Communist-front organization must disclose such membership when seeking or holding employment in a defense facility.

2. *Committee recommendation.*—Adoption of legislation which subjects officers of national labor unions having bargaining contracts in connection with national defense contracts involving secret and classified work for the Atomic Energy Commission, the Army, Navy, and Air Force, to the same security standards as members who have access to secret or classified material (March 15, 1950).

[1] This information is taken from a Research Study by the Legislative Reference Service of the Library of Congress, entitled *Legislative Recommendations by House Committee On Un-American Activities, Subsequent Action Taken by Congress Or Executive Agencies* (released December 30, 1960).

Action.—On February 2, 1955, the Secretary of Defense issued Industrial Personnel Security Review Regulation (20 Fed. Reg. 1553, 6213, 7139; 32 C.F.R. 67.1 through 67.5–5), which prescribes the uniform standards for determining the eligibility of contractors, contractor employees, and certain other individuals for access to classified defense information, and which establishes procedures for denial, suspension, or revocation of clearance.

3. *Committee recommendation.*—That Congress adopt a resolution calling upon the Secretary of Defense to immediately place in effect the provisions of Section 5 of the Internal Security Act of 1950, 50 U.S.C. 784 (January 2, 1951). Section 5 provides that members of Communist organizations which are registered, or which have been finally ordered to register, with the Attorney General under the Act, shall not conceal their membership in such organization when seeking or holding employment in a defense facility, and, if such organizations are Communist-action organizations, such members shall not engage in any employment in a defense facility. The Secretary of Defense shall designate and proclaim a list of facilities, to which he thinks these provisions should apply in the interests of national security.

Action.—In compliance with Section 5, the Secretary of Defense maintains a current list of defense facilities.

4. *Committee Recommendation.*—Amendment of Taft-Hartley Act to make impossible a situation where a union official formally resigns from the Communist Party and then immediately signs a non-Communist affidavit (January 2, 1951). A similar recommendation, in another form, was subsequently made by the Committee (February 6, 1954).

Action.—The Act of July 26, 1955, amended Section 13A(e) of the Communist Control Act of 1954 to provide that in determining whether an organization is a Communist-infiltrated organization, the Board shall consider to what extent the management of the organization is conducted by one or more individuals who have been members of a Communist organization within the past three (instead of "two") years. 50 U.S.C. 792a(e)(1).

Section 504 of the Labor-Management Reporting and Disclosure Act of 1959 provides that no person who is or has been a member of the Communist Party shall serve as an officer of any labor organization for five years after the termination of his membership in said party. 29 U.S.C. 504.

5. *Committee recommendation.*—That appropriate legislation be enacted requiring an affidavit by any person bidding for a government contract, that he is not now and has not been within the past 10 years a member of any organization advocating the overthrow of the Government by force and violence (January 26, 1955; repeated on January 11, 1956, and January 2, 1957).

Action.—No legislation enacted. However, as noted above (pp. 93–94) the Secretary of Defense issued the Industrial Personnel Security Review Regulation, which prescribes the eligibility of contractors, contractor employees, and certain others for access to classified defense information.

A bill was introduced in the 85th Congress (H.R. 9352) which provides for security clearance of government contractors who have access to classified data. This bill was not enacted into law.

6. *Committee recommendation.*—The enactment of H.R. 8121, 86th Cong., 1st Sess., which was reported out

by the Committee on September 2, 1959 (H. Rept. 1122). The bill would authorize the Secretary of Defense to prescribe uniform standards and criteria for determining the eligibility for access to classified defense information of any person who has a contract or subcontract with a military department or an employee of any such person. This bill was introduced by the chairman of the Committee after this Court held, in *Greene* v. *McElroy*, 360 U.S. 474, that the regulations promulgated by the Secretary of Defense relating to this subject were without explicit authorization by either the President or Congress and, therefore, an employee lacking a security clearance required by such regulations cannot be discharged as a security risk without according him the right of cross-examination and confrontation (February 8, 1960).

Action.—H.R. 8121 was passed by the House on February 2, 1960, but received no action in the Senate.

On February 20, 1960, the President issued Executive Order 10865, authorizing the Secretary of State, Secretary of Defense, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeornautics and Space Administration, and the Administrator of the Federal Aviation Agency to prescribe, by regulation, specific safeguards necessary to protect (1) releases of classified information to industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with their respective agencies and (2) other releases of classified information to industry that such agencies have responsibility for safeguarding.

* * *

In its annual report for the year 1960, the Committee on Un-American Activities expressed its concern over communist infiltration in basic industry as a result of its investigations (p. 133):

> It is urgently recommended that Congress authorize the President to prescribe regulations, relating to Government contracts with industry, creating industrial personnel security clearance programs, to assure the preservation and integrity of classified information, and reposing in the President a summary or discretionary power to deny clearance, without judicial review, to those not clearly loyal or who may be security risks, with authority to subpena witnesses to testify under oath in matters relating to any investigation or hearing provided for by such regulations.
>
> This committee has established through reliable testimony received in numerous hearings that the Communist Party has deliberately infiltrated basic industry, including of course industry engaged in defense production involving highly classified projects of the military establishments. For example, Mr. John Lautner, an active Communist Party member for more than 20 years prior to his expulsion from the party in 1950, who held high Communist Party office on the national level, testified that as far back as 1932 the Communist Party in the U.S.A. embarked upon a program called "Face to the Shop," which was designed to infiltrate basic industry. He traced the development of that program and testified that in 1948, Henry Winston, who was the organization director of the Communist Party, later convicted in the first Smith Act case, gave a report on the party policy of concentration on basic industry and was able to say "that the reorganization already resulted in establishing over 3,000 Communist Party branches throughout the country, a whole slew of industrial sections, and be-

tween 400 and 500 industrial branches were established by the 1948 convention." Mr. Lautner further testified that most of these party members came from colleges and universities, were young men who were convinced that a so-called bourgeois education and doploma had no future, and had uprooted themselves and become professional revolutionaries, with an objective of colonizing industry. (See Investigation of Communist Infiltration and Propaganda Activities in Basic Industry, Gary, Indiana, Area, Hearings held February 10 and 11, 1958).

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EDWARD YELLIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE* ON REARGUMENT

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Interest of Amicus

This brief is being submitted with the consent of counsel for both sides filed with the Clerk of this Court.

The American Civil Liberties Union is a national non-profit organization devoted to the implementation of the rights guaranteed by the United States Constitution. It is especially concerned with governmental action which in any way restricts freedom of expression or association.

Argument

This case presents another instance of a conviction for contempt for refusal to answer questions put by a Congressional Committee relating to Communist affiliations. We are concerned only with the issue of the scope of the First Amendment in such inquiries and wish to press upon the Court the desirability of overruling its decisions in *Barenblatt* v. *United States*, 360 U. S. 109; *Wilkinson* v. *United States*, 365 U. S. 399, and *Braden* v. *United States*, 365 U. S. 431.

In those cases the majority of the Court rejected contentions based on the First Amendment on the ground that there was involved "a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown". (360 U. S. at 126); that it was "the nature of the Communist activity involved * * * that establishes the Government's overbalancing interest" (365 U. S. at 414).

We respectfully submit that the underlying concept of a "balance" of interests is fallacious, partly because there is no room in the First Amendment for such balancing, partly because even if balancing were appropriate the scales are unduly weighted if one considers the issue to be one of public versus private interest.

We recognize, of course, that those views have been rejected by the Court though eloquently addressed by its own members in dissent (see particularly Mr. Justice Black, 360 U. S. 142-145). But just as this Court has, from time to time, overruled earlier decisions upon later reconsideration (see, notably, *Minersville School Dist.* v. *Gobitis*, 310 U. S. 586, overruled by *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U. S. 624; and *Wolf* v. *Colorado*, 338 U. S. 25, overruled by *Mapp* v. *Ohio*, 367 U. S. 643), so we submit that it should now reconsider *Barenblatt* and cases resting on it and overrule them.

1. At the outset we wish to make it clear that the position we are urging upon the Court involves no dogmatic assertion of absolutes. Situations can be envisioned in which unrestricted freedom of expression might result in the denial of another basic right guaranteed by the Constitution, such as the right to a fair trial. (See *e.g.* the considerations mentioned by Mr. Justice Frankfurter in *Maryland* v. *Baltimore Radio Show*, 338 U. S. 912, at 919, 920, and *cf. Bridges* v. *California*, 314 U. S. 242; *Pennekamp* v. *Florida*, 328 U. S. 331, and *Craig* v. *Harney*, 331 U. S. 367).

2. While the distinction may appear a semantic one, the proper approach, as developed at length by Frantz in The First Amendment in the Balance, 71 Yale Law Journal 1424-50, is not one of "balancing," but one of definition. In other words, the basic question posed in the context of the case at bar is whether the First Amendment protects a person's right to be silent with regard to certain kinds of affiliations and, if so, then to what extent. In defining the extent of such protection the courts must, of course, consider the consequences of any rule. And, as Mr. Frantz points out in briefly mentioning this problem (*op. cit.* at 1434), that process can be described as "balancing." But he persuasively demonstrates the dangers that lie in such approach.

3. In any case, regardless of the language used to describe the judicial process involved, it is a fundamental error to suppose that what is involved is a consideration of private versus public interests. Merely posing the problem in such terms almost produces the answer. The First Amendment does not exist to protect private interests, but to enshrine the most basic element of a democracy, namely, the importance to the community of the fullest and freest discussion of public issues, discussion which, of course, is impossible without free association, even, as this Court recognized in *Talley* v. *California*, 362 U. S. 60, without a measure of anonymity. Indeed, the majority of the Court there in effect rejected the "private v. public" interest consideration which was relied on by the dissenting justices (362 U. S. at 69).

* * *

In the light of the foregoing, there are various questions which should be considered by the Court:

1. Is the right to remain silent about affiliations, political, religious, or otherwise, protected by the First Amendment at all? That the answer must be affirmative cannot be doubted in the light of this Court's various decisions. (See particularly *Bates* v. *Little Rock*, 361 U. S. 516, at 523.)

2. Is that right protected against inquiry by all governmental agents, and if not, against which? Here there is, we submit, reason for consideration of the objectives of such agencies. For instance, an answer can be compelled in a law suit where it is deemed relevant to an issue which must be decided to the detriment of one of the parties. For there the public interest in the fair administration of justice is superior to the public interest in free association and the accompanying right not to disclose, leaving the witness to such protection as the privilege against self-incrimination might give in an appropriate case.

Can, however, it be said that the public interest in all inquiries by legislative committees is so great as to outweigh its interest in free association? Surely not, as this Court's decisions in *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; *Louisiana* v. *NAACP*, 366 U. S. 293, and *NAACP* v. *Gallion*, 368 U. S. 16, make clear.

To draw the line the Court has attempted various formulations, no one of which appears to have secured the approval of all its members. Perhaps that made by Mr. Justice Stewart in the *Bates* case, *supra*, at page 524, has met with the widest approval. It certainly has the advantage over the formulation in *Barenblatt* which weighed private against public interests. Paraphrasing what Mr. Justice Stewart said there, the problem here is whether the Committee on Un-American Activities of the House of Representatives has "demonstrated so cogent an interest" in obtaining answers to the questions put "as to justify the substantial abridgement of associational freedom which such disclosures will effect."

To such a question it is not a sufficient answer to point to the dangers of the Communist conspiracy as was done in *Barenblatt* (360 U. S. at 127-128). To recognize that these dangers justify the creation of a committee to gather facts to assist the Congress in legislating is a far cry from ac-

cepting them as sufficient to require disclosure of affiliations from unwilling witnesses. For it should ever be borne in mind that the only proper objective of such a committee is to recommend legislation, not to establish the facts with regard to a particular individual or occurrence. Of course some facts must be established before legislation can rationally be proposed. But, unlike a law suit, not all the relevant facts need be developed.

We suggest, therefore, that the courts, in considering the right of any investigating committee substantially to abridge associational freedom, should consider the cogency of the need for the particular answers requested, not the importance of the general subject under investigation. This, perhaps, is another way of putting the objections voiced to the insistence on answers in particular instances as being motivated by the desire for exposure. (See, *e.g.*, Mr. Justice Brennan, dissenting in *Barenblatt*, 360 U. S. at 166, and in *Wilkinson*, 365 U. S. at 429.) Our suggestion avoids the ascription of "motives" which the majority in *Barenblatt* ruled to be beyond judicial scrutiny (360 U. S. at 132, 133).

For what a court will do if our suggestion is deemed acceptable would be to study the record, not only with regard to the particular witness, but the entire record relating to the background, to see what information the Committee had obtained and was generally available. Ordinarily enough information for legislative purposes is gathered from willing witnesses. That certainly has been the case with the House Un-American Activities Committee. Only if a study of the whole record shows a "cogent interest" in obtaining answers to the particular questions put to the recalcitrant witness should answer be compelled—or punishment inflicted.

* * *

So we come to the record here. Counsel for petitioner attempted, at his trial, to establish that the Committee, when it questioned him, already had so much relevant in-

formation that its interest in answers to the questions put was trivial. The Court of Appeals appeared not to recognize the issue which had been presented. (See 287 F. 2d 292, at 298.)

The government, while claiming that the judicial function is "exhausted" when it has assessed the importance of the subject matter (Brief of the United States on Reargument, p. 60), in effect admitted that the Committee had full information (*id.* p. 61), but urged the importance of corroboration—as though the inquiry were a trial at which conclusions of fact had to be drawn!

The government's further contention (*id.* p. 62) that the inquiry was necessary because the Committee knew nothing about the activities of the Communist Party in Indiana is also beside the point. Indeed, the claim is disingenuous in the light of the many pronouncements about the Communist Party which have emanated from Congress. For the issue is not, as the government would have it, whether petitioner could offer material for "new investigation," but whether there was "cogent" need for it in view of what was already known. And of that there was no evidence whatever.

CONCLUSION

We urge that *Barenblatt, Wilkinson,* and *Braden* be overruled and petitioner's conviction reversed.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 35

EDWARD YELLIN,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF ON REARGUMENT

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PETITIONER'S REPLY BRIEF ON REARGUMENT[1]

The Government has withdrawn the brief previously submitted in this case and, on reargument, has filed a new and much more extensive brief. The new brief is evidently prompted by the feeling that despite this Court's decisions in *Barenblatt v. United States*, 360 U.S. 109, *Wilkinson* v. *United States*, 365 U.S. 399, and *Braden v. United States*, 365 U.S. 431, "the present controversy involves the most delicate and dangerous of the Court's responsibilities" (Gov't Brief, p. 26) and hence a re-examination of the principles adopted by the Court in the cases cited is appropriate. We concur in and indeed welcome this conclusion; we too think that this controversy involves constitutional issues of such magnitude that the Court may never rest in its

[1] This brief replaces the reply brief on the merits filed by the petitioner.

examination of them even in the face of "prior decisions made by [this Court] after full argument and deliberation" (Gov't Brief, p. 25). The rule of *stare decisis* can never be permitted to supersede the commands of the Constitution.

We differ however as to the nature of this constitutional issue, and so does this Court. The Government sees it as the power of the Court to "review the manner in which the Congress . . . has performed one of its own congressional functions" (Gov't Brief, p. 26). In the opening sentence of the Court's opinion in the *Barenblatt* case (at p. 111), the issue was described as "the conflicting constitutional claims of congressional powers and of an individual's right to resist its exercise". We think the Court was correct. The principal problem is not one of the relationship between the Court and the Congress, but rather the relationship between our Government—in this case, the Congress—and its citizens, and the extent to which the former may control the political activities of the latter. The House Committee on Un-American Activities (hereinafter referred to as the Committee) has for twenty-five years been engaged in an inquiry into the political beliefs and associations of large numbers of Americans with the avowed purpose of destroying an unpopular political movement by exposing its adherents in a context which does not permit of a free debate and the open exchange of ideas. This Court cannot prevent the Committee from exercising this power, unconstitutional though it may be, except when a justiciable controversy is presented to it. When the Committee resorts to compulsory process to call witnesses before it and when a witness resists that process, thus bringing on to himself a criminal indictment, such a justiciable controversy is presented. This is the case now before the Court.

This issue no more involves "the dangers of collision" (Gov't Brief, p. 26) between Court and Congress than does any other case presenting the issue of the constitutionality of congressional action.

POINT I

The Activities of the Committee Constitute Unlawful Abridgement of the Constitutional Rights of the Petitioner.

We do not quarrel with the Government's contention (Brief, pp. 26-35) that congressional investigating committees are lawful. We will even assume, *arguendo*, that all of the Cold War cases cited by the Government at pages 36 to 45 of its brief were correctly decided, though we note strong (and to our minds persuasive) dissenting opinions in every one of them.

The specific issue raised by this case, however, is not whether Congress may impose, in general, some restrictions on Communists. It is agreed by all that "the provisions of the First Amendment . . . reach and limit congressional investigations" (*Barenblatt, supra*, p. 126). The process by which such investigations may erode and even destroy democratic discussion of political issues is described in *Watkins* v. *United States*, 354 U.S. 178 at 197. For analogous situations, see *Sweezy* v. *New Hampshire*, 354 U.S. 234; *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449; *Scull* v. *Virginia*, 359 U.S. 344; *Bates* v. *City of Little Rock*, 361 U.S. 516; *Shelton* v. *Tucker*, 364 U.S. 479. The issue here is the extent of the limitation which, we all agree, the First Amendment imposes on congressional investigations.

It can hardly be denied at this late date that the Committee does interfere with the free exercise of speech and assembly and with the correlative right to remain silent

concerning one's political views. The literature on the subject is so extensive, the public discussion so widespread and the judicial analysis so exhaustive that this Court would be blind if it did not recognize what "all others can see and understand". *United States* v. *Rumely*, 345 U.S. 41, 44; *Child Labor Tax Case*, 259 U.S. 20, 37. For over two decades this Committee has been a major repressive force against the exercise of activities supposed to be protected by the First Amendment. It preceded and survived the era of Senator McCarthy. As much as any other institution in our country it has stifled "the dialogue that has characterized the free society," so that even in these days, "no debate takes place on crucial issues". Douglas, "The Submerged American", Frontier Magazine, Aug. 1962, p. 2. Yet we know that "the security of the Republic, the very foundation of constitutional government" lies in the preservation of free speech, press and assembly so that the opportunity for free political discussion may be maintained. *De Jonge* v. *Oregon*, 299 U.S. 353, 365.

The Government, as in the other cases involving this Committee, has sought to avoid discussion of the effect of the Committee's activities by close and literal attention to the limited facts in the case at bar. Thus this case is treated as if the Committee were engaged in a single investigation into "colonization" of the steel industry and as if the petitioner were an isolated instance of a recalcitrant witness. Even if this were so we would argue that the Committee had exceeded its power and that even the single recalcitrant witness is entitled to the protection of the Constitution. But this is not so. This investigation is but one of hundreds which the Committee has conducted under the vague provisions of its charter, which gave it jurisdiction over "Un-American propaganda activities" and under the even more vague and general jurisdiction granted to the Committee by this Court in the *Barenblatt* case. This

petitioner is but one of thousands of witnesses whom the Committee has called. He is not an isolated unwilling witness; the overwhelming majority (about 85%) of the witnesses called by the Committee has refused to answer questions. His case is not the exception—it is the rule. He is here only because, by refraining from use of the protection provided by the Fifth Amendment, he (like Watkins, Barenblatt, Braden, Wilkinson and about thirty others) chose to challenge the Committee directly.

Viewed against this background, the enormity of the Committee's offense against the American people becomes clear. This is not only the case of a single individual who is held up to public scorn because he holds unpopular views. Such an individual is entitled to protection against government interference, but it is true, as the Government suggests, that persons who espouse unpopular views may expect some unpopularity as a result. This is rather the case of a society which is denied the right to hear the expression of dissenting views, which is denied the opportunity for free political discussion. Our democratic society, together with the Yellins, the Bradens and the Wilkinsons, is a co-petitioner in these cases.

The Government responds to all of this by, in effect, a plea of confession and avoidance. We are told that all of this, even if true, is required by our national security and that we resolve the issue in each case through "a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown". *Barenblatt, supra,* at p. 126. We do not fully understand the balancing doctrine; as we point out in our original brief (at pp. 16-18) we do not know who balances what and how the result is determined. With the greatest deference to this Court, we doubt whether anyone understands it. But, at least in this point in our argument, our quarrel is not

with the application of the balancing doctrine. We think it wrong in principle.

It is wrong in principle for the reasons set forth in the dissenting opinion in *Barenblatt*. It is contrary to the clear mandate of the Constitution. Moreover it proceeds on the false premise that our national security requires the suppression of some rights of speech, assembly and association. There is nothing in our history (or in any other history) which teaches that the suppression of the free expression of thought, however heretical, contributes to the preservation of a democratic society. The contrary is true; if we can boast of any great contribution to political theory it is the doctrine of *Whitney* v. *California*, 274 U.S. 357, concurring opinion 376; of *Stromberg* v. *California*, 283 U.S. 359; of *De Jonge* v. *Oregon*, 299 U.S. 353; of *Bridges* v. *California*, 314 U.S. 252; of *Jones* v. *Opelika*, 316 U.S. 584, 319 U.S. 103; of *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624; of *Hannegan* v. *Esquire*, 327 U.S. 146; of *Adamson* v. *California*, 332 U.S. 46, dissenting opinion at p. 89; of *United States* v. *C.I.O.*, 335 U.S. 106, concurring opinion at p. 144; of *Watkins* v. *United States*, 354 U.S. 178 and the recent dissenting opinions in *Barenblatt, Braden, Wilkinson* and *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 115, 137, 169, 191.

Finally, the activities of the Committee, it seems, are sought to be justified on the ground that they are aimed only at Communists and Communist activity. The record of the Committee, of course, shows that its activities are directed not only against Communists but against Communist dupes, Communist fellow-travellers, ex-Communists, crypto-Communists, Communist sympathizers, persons subject to Communist domination, organizations which are Communist infiltrated, socialists and a host of other categories variously described in the new vocabulary developed

by the Committee. There is hardly any aspect of American life from the motion picture industry to the clergy, from the press to the trade unions, from the peace movement to the universities which has not at some time or other been honored by the issuance of Committee subpoenas. Folk-singers, teachers, lawyers, journalists, doctors, housewives have all had their chance to visit with the Committee. The scope of its activities as interpreted by this Court would permit it to investigate literally anything, if only to discover whether there exists in the subject under investigation some faint aroma of a "subversive" nature.

For almost all of recorded history groups of heretics have been singled out as beyond the pale of the rights enjoyed by the orthodox; we do not believe such application of our Bill of Rights is permissible.

POINT II

On Balance, Petitioner's Right to Refrain From Disclosing His Political Views and Associations Should Be Protected in the Circumstances of This Case.

Without in any way waiving our fundamental objections to the balancing concept, we consider now the result of its application here. In its present brief, the Government makes a serious effort to meet the challenge posed in Point I of our original brief, namely, "the task of defining and exploring the 'balancing concept'" expressed by this Court in its most explicit form in the *Barenblatt* case at p. 126 (Pet.'s Brief, p. 15). So far as we know, this is the first time the Court has had presented to it, from the Government's point of view, the problem of applying the balancing test.

A. The public interest at stake is defined (Gov't. Brief, p. 48) as "the need for information concerning putative

subversive activities in a critical area of our national life." No effort is made at this point and very little elsewhere to place in the balance the much greater public interest in the right to hear and participate in open political discussion without fear of governmental reprisal.

What weight is to be given this public interest, as defined by the Government? At the time of petitioner's hearing the Committee had been collecting information on alleged Communist infiltration in basic industry for many years (see our original brief at pp. 18-20). Does there not come a time when the public interest in collecting more information becomes *de minimis?* How many times does the Committee have to listen to the dreary recital of repetitious testimony by John Lautner[2] and a host of other professional government witnesses,[3] before it has collected enough information to convince it that legislation is or is not needed?

How many times does it have to use its compulsory process to call witnesses who, it knows in advance, will refuse to testify before it can draft the laws necessary to protect our society from the menace which seems to lurk

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[2] Lautner testified in New York at hearings held during the 84th Congress; his testimony appears at pp. 6178, 6233 and 6338 in the Committee's printed hearings for that Congress. He testified during the 85th Congress in New York (at pp. 275, 650, 800 and 2493) and in Chicago (at p. 485) in addition to his testimony at Gary. He was, of course, an important witness in *United States* v. *Flynn*, 216 F. 2d 354, 362. Indeed, he testified in both New York Smith Act cases and in Smith Act cases in Detroit, St. Louis, Colorado, Baltimore, Hawaii, Seattle, California, New Haven, Pittsburgh and perhaps others. During the entire period of time in question he was on the government payroll.

[3] Most of the witnesses such as Philbrick (82nd Congress at p. 1257 and 83rd Congress at p. 2007) Younglove (84th Congress at p. 4834), Peoples (84th Congress at pp. 4949; 4979) also testified at Smith Act cases concerning alleged infiltration.

in every factory, mill and mine? The Government itself refers (Brief, p. 49) to the "mass of material available" as early as 1947. Indeed, this material has been before this Court on many previous occasions. See, for example, the concurring opinion of Mr. Justice Jackson in *American Communications Association* v. *Douds*, 339 U.S. 382, 422, 424. The files of the Committee since that date have been implemented by thousands of pages of testimony taken in half a dozen different cities on this very subject of Communist infiltration in basic industry. See footnote (1) at page 11 of our original brief. Is there never a time when the task is completed—or at least when more inquiries weigh very little against the right of petitioner and the right of a free society to enjoy without governmental interference the privileges granted by the First Amendment?

We argued in our original brief that the information sought by the questions put to petitioner were at best cumulative and that the Committee concededly knew the answers to the questions it asked. To this the Government responds (at p. 59):

> "... we most earnestly submit that the power of a Congressional committee to ask material questions in the course of an inquiry into a proper subject of legislative investigation cannot be made to depend upon a judicial determination of how helpful the Court would find the information."

But the issue we are discussing at this point is not the relevance of the information, or its materiality, or even the "power" of a congressional committee to ask such questions. We are discussing how heavily it weighs in the *Barenblatt* balance, "in the particular circumstances shown." In *this* connection it is certainly appropriate to consider the fact that the information was either cumulative of testimony already given to the Committee *ad nau-*

scum in other hearings (Counts 2 and 4) or corroborative of information the Committee already had in its files (Counts 1 and 3; Gov't. Brief, p. 63). We are concerned here with weight in a constitutional balance, not with the narrow and technical problem of pertinence. If the Court is not to consider weight, how can it balance?

B. So much for one side of the scale. On the other side are the personal rights of petitioner as granted by the First Amendment and the fundamental rights of a democratic society to govern itself after full discussion of political issues, free from government investigation, exposure or other forms of interference. There is little mention of the latter point in the Government's brief, though we should have thought it one of the most critical of the problems raised in this record. How can a democratic society hope to succeed in an atmosphere in which its citizens are afraid to engage in free and open discussion of political issues—an atmosphere engendered by the activities of the very Committee here under discussion?

The Government seeks to minimize petitioner's personal rights under the First Amendment by noting he was maintaining only his right to be silent and not to speak; that he was motivated by the preservation of his right of privacy, not his right of free speech (Brief, pp. 64-66). Admitting a constitutional right against undue governmental prying and conceding that it is essential to freedom of belief and, "in the beginning", essential to effective political action, the Government nevertheless comes to the conclusion (Brief, p. 64) that such a constitutional right does not have much weight.*

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* The Government applies a double standard in determining how weight in the balance is to be determined. In weighing the public interest in collecting information, the Government deals in very broad terms—it says that so long as there is a public interest we

This is a most disingenuous argument. Aside from our disagreement as to the weight to be given the right of privacy (considered by some to be the most important of all rights),[5] there is a more important point to be made. Indeed, it was well made by the petitioner himself, when at the hearing he was taunted by the Chairman of the Investigating Committee, who said:

> "Isn't this the best place to clarify the atmosphere . . . is this not a great opportunity to eliminate whatever question might be in anybody's mind, particularly mine, about your activities?"

The witness replied:

> "Mr. Walter I do not feel that this is the place for myself, as an individual and as a citizen, to discuss my beliefs, my associations or whatever expressions of opinion I have ever made. I feel that ideas in the democratic process should be settled, should reach some kind of an understanding, in the market place of ideas and not at a congressional investigation . . . I believe the entire democratic process revolves around settling things in a free and open market and this is not the place for it. This is a hearing. It is not an expression of public opinion" (R. 173).

The right of self-expression certainly includes the right to choose for one's own self the occasion for such expres-

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need not inquire too closely into the extent of the need. But in weighing the individual's interest and privacy "the exact nature of the constitutional issue must be taken into account in weighing the governmental against the private interest" (Brief, p. 64).

[5] ". . . The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emo-

sion. A witness at a hearing of this Committee may well reject such an occasion for a public debate. The record, of course, is silent on the atmosphere at the Gary hearings but no one who was there could possibly confuse it with the marketplace of ideas sought by the witness. Certainly neither the existence of nor the weight to be afforded to constitutional rights can depend on the Government's (or this Court's) judgment as to when, where and how those rights are to be exercised.

C. We conclude, on the basis of the foregoing, that the public interest in further disclosure of information weighed very little in the *Barenblatt* balance as against the very substantial public and private interest in the preservation of free speech and association, on this record. But there are issues remaining which add to the reasons for a reversal of petitioner's conviction. A reading of the *Barenblatt* formulation of the balancing test would lead to the assumption that whether X outbalances Y is a question of fact. If so, testimony should be adduced in support of the opposing factual contentions. The failure to adduce such evidence can hardly be met by any doctrine of judicial notice—clearly the weight to be given to the various elements in the scale are in sharp dispute. The Government having failed to offer any evidence in support of its contentions, petitioner's motion to dismiss at the close of the Government's case should have been granted. Petitioner himself did his best in offering the testimony of Professor Emerson, but the testimony was rejected.

The Government avoids this problem with the statement (Brief, p. 76) that "the issue whether a witness' rights

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tions and their sensations. They conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. . . ." Brandeis, J., dissenting in *Olmstead* v. *United States*, 277 U. S. 438, 478.

under the First Amendment has been violated by a congressional committee is . . . a question of law." This position is not responsive to the question. The issue whether X outbalances Y can hardly be called a question of law.*

It is in this connection that we offered the testimony of Professor Emerson. The Government argues at page 76 of its brief that his testimony "gave no new legal or factual considerations which were not considered by this Court in Barenblatt." It may be true as the Government points out at that place that Professor Emerson's testimony was contrary to the conclusions relied upon by the Court in *American Communications Association* v. *Douds*, 339 U.S. 382; *Dennis* v. *United States*, 341 U.S. 494; and *Carlson* v. *Landon*, 342 U.S. 524. It may also be true that his testimony was contrary to the findings of Congress as set forth in the Subversive Activities Control Act of 1950, 64 Stat. 987. However, it is our understanding that the purpose of a trial is to determine disputed issues of fact. Indeed, Professor Emerson's testimony is admissible precisely because it challenges the facts which this Court accepted in other cases, especially because in none of those cases, as far as we know, was evidence presented to support the findings of fact on which the Court relied. In those cases, this Court took judicial notice of certain facts, based on purported congressional findings and on the general knowledge of the Justices of this Court. Certainly, it lies in the power of a defendant in a criminal case to prove that the

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* We note that the Court of Appeals did hold that "It is not a question of fact as to what elements go to make up the balance of interests, public and private, but a legal matter . . . ." Court of Appeals decision, 287 F. 2d 292 at 298. The question, however, is not what elements go to make up the balance of interests—of that there is probably not much dispute—but rather what weight is to be ascribed to these elements. See our discussion at p. 18 of our original brief.

factual assumptions upon which the Court and Congress proceeded are in fact incorrect.

D. Despite the foregoing, we must confess that we find ourselves attempting to weigh the imponderable and to measure the limitless. The task of balancing or even comparing rights and interests such as those discussed above is for the metaphysician, not the lawyer. How much weight in a balance can be given to the public interest involved in the tenth hearing into Communist infiltration into basic industry? How much weight do we give to the individual's right to remain silent when questioned concerning his political beliefs by a congressional committee in a courtroom full of hostile angry faces? These questions are reminiscent of the futile debates of medieval scholastics. They do not seem appropriate for the determination of rights on which so much of our liberty depends.

And yet, we can see no way of avoiding such disputes if this Court is to continue to apply the balancing test. Indeed, the questions raised above are not the whole of the problem—many others will arise in other cases. There will be questions of burden of proof, issues of the admissibility of evidence (only suggested by the issue raised here with respect to the Emerson testimony) and endless dispute in areas having nothing to do with "subversive" activity but relating instead to the struggle by the Negro people in the South for equal rights. (See cases cited in our original brief at pp. 16 and 22.)

This Court does not avoid issues because they are difficult but it ought not to adopt the rule by which the constitutional rights will depend on standards impossible to apply with some degree of objectivity and exactness.

POINT III

The Statute Under Which Petitioner Was Convicted Was Unconstitutionally Vague.

The Government argues that Rule XI of the Rules of the House is not a criminal statute and hence that "the rules for construing criminal statutes do not apply to the construction of Rule XI" (Gov't. Brief, p. 78).

The short answer to this contention is found in *United States* v. *Rumely*, 345 U.S. 41. In that case a conviction under Section 192 of Title 2 was upset on the strength of the Court's interpretation of the resolution creating the committee. That case holds that Sec. 192 makes it a crime for a witness to refuse to give testimony to a Congressional committee upon any matter under inquiry *which is within the jurisdiction of said committee*. The statute so read is vague and uncertain.

This Court has held it improper to require "the exaction of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all." *A. B. Small Co.* v. *American Sugar Refining Co.*, 267 U.S. 233. To the same effect see *United States* v. *Cohen Grocery Co.*, 255 U.S. 81. Indeed, this rule has been applied not only to criminal cases but even to civil cases where the standard is much less rigorous. *Standard Chemicals Corp.* v. *Wayne Chemical Corp.*, 231 N.Y. 51.

It is true that convictions have been had under 192 in *Barenblatt*, *Braden* and *Wilkinson*. But for the reasons set forth above at page 1 and suggested by the Government at page 26 of its brief, the issue ought not to be allowed to rest on that fact alone. As in the case of Point I above, constitutional rights are at stake, this time under the due process clause of the Fifth Amendment. It is never

too late to reexamine such constitutional issues, especially when, as here, the matter was not discussed by the Court in any of the decisions upon which the Government relies and does not even seem to have been raised in *Barenblatt* and *Wilkinson*.

> "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents". *Webster* v. *Fall*, 266 U.S. 507, 511.

This is a classic case of a vague and hence unenforceable statute. We regret the failure of the Government to discuss this issue on its merits. While this Court sought to give meaning to the law by reference to its history in the *Barenblatt* decision, we know of no case, prior to *Barenblatt*, in which a court relied on legislative history in order to uphold a criminal conviction. The Government does not cite any such case and we suspect that there is none. We think such procedure improper. See our original brief, p. 31.

POINT IV

Petitioner Was Entitled to Be Heard at Executive Session.

In Point II of petitioner's brief, we argued that the Committee violated its own rules in failing to consider petitioner's request for an executive session. For the most part, we think that the issue is sufficiently drawn so as to make it unnecessary to reply except for one slight respect in which we think the Government has mistaken the record. At page 38 of its brief, the Government notes that Congressman Walter testified that the Committee had passed on the question of whether or not it would hear petitioner

in executive session. As often happens, petitioner and the Government have each quoted a different portion of a witness' answer, with the result that the context in which the answer is given becomes clouded. So that the Court may more clearly see this context, we quote at some length:

"Q. . . . Wasn't it possible for the Committee to hear Mr. Yellin in executive session at that time? A. Well, the Committee already passed on the question of whether or not we would hear Mr. Yellin at a session when the purpose of calling him was discussed, and it was decided then that the rule with respect to an executive session was not applicable because the investigator—and I might say it was Mr. Collins, a former F.B.I. agent, who developed this entire matter, and we were willing to accept his story with respect to the proposed testimony.

Q. And what was his story? A. Well, his story was that the man was a known Communist; that he had been active in the international conspiracy, and that he had deceived his employer; and, furthermore, he came within the category of those people that we were experiencing a great deal of difficulty in finding out about with respect to the colonization.

Q. Did you assume, from Mr. Collins' report, that Mr. Yellin would be a witness who would refuse to give information to the Committee? A. We had no way of knowing.

Q. Well, what conclusions did you draw from the report of Mr. Collins, which you have just related? A. We concluded that this would be a fine witness for the Committee in support of proposed legislation having to do with colonization, and, two, having to do with the protection of our defense efforts. And it is always worth a chance that somebody will testify.

Q. But it wasn't worth the chance of calling him in

executive session, to see what his position would have been? A. I am sure that had you communicated this whole matter to the Committee before we left Washington so that we could have given it due consideration—we would have, and always do—we might have a different situation today" (R. 70).

Congressman Walter here makes it perfectly clear that the Committee, in deciding not to hold an executive session, was violating its own rules. The rules provide that an executive session is to be granted when "the interrogation of a witness in a public hearing might . . . unjustly injure his reputation." The Committee applied a completely different test as the testimony quoted shows.

Conclusion

The conviction of petitioner should be reversed and the indictment dismissed.

Respectfully submitted,

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